129-329

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. ~~401.~~ 129

ELSIE WHITE, JAMES B. WHITE, MARY S. WHITE, ANNIE C. WHITE, AND ANN WHITE, APPELLANTS,

vs.

FREDERICK W. COTZHAUSEN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 15, 1885.

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No. 401.

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INDEX.

	Original.	Print.
Caption	1	1
Bond for costs (suit No. 17,743)	2	1
Transcript from State court	3	2
Bill of complaint	4	2
Security for costs	26	9
Summons	27	10
Sheriff's return	28	10
Appearance for James B. White	29	11
Alias summons	30	11
Sheriff's return	31	11
Answer of Alexander White	32	12
Answer of Elsie White *et al.*	47	17
Answer of Elsie and Mary S. White	57	20
Notice of motion for removal	64	22
Petition for removal	65	23
Bond for removal	69	24
Order for removal	71	25
Clerk's certificate	72	25
Order granting leave to file amended bill	74	26
Bill of complaint	75	26
Replication to answers	102	35
Stipulation as to answers	105	36

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	Original.	Print.
Answer of Ann White	106	36
Orders extending time to take proofs	119	41
Order on complainant to close proofs	120	41
Bond for costs (suit No. 17,974)	122	42
Bill of complaint	123	43
Subpœna	156	53
Appearance for certain defendants	158	54
Marshal's return on subpœna	158	54
Answer of Ann White *et al.*	159	55
Affidavit of James B. White *et al.*	173	62
Replication to answer	175	63
Order taking motion to consolidate under advisement and extending time to take proofs	176	63
Order on complainant to close proofs	176	64
Order to consolidate causes Nos. 17743 and 17974, &c.	177	64
Hearing	178	64
Submission	178	65
Innterlocutory decree	179	65
Supplemental bill	190	70
Answer of Ann White *et al.* to supplemental bill	199	73
Order for default against Alex. and Margaret White	204	76
Order on defendants to show cause	205	76
Exceptions to answer	206	76
Order setting aside interlocutory decree &c., and grantnig leave to amend bill	207	77
Amendment to bill	209	77
Answer to amended bill	215	78
Final decree	220	82
Appeal and allowance of same	236	87
Certificate of evidence	238	88
Evidence for complainant	238	88
Testimony of Alexander White	239	88
Annie C. White	258	114
Mrs. Ann White	261	117
Elsie White	273	135
Mary S. White	278	141
Ira W. Buell	279	142
James B. White	281	144
Alexander White (resumed)	304	173
Joseph N. Barker	305	176
Alexander White (resumed)	306	176
Frederick W. Cotzhausen	341	219
George Sylvester	354	235
E. C. Thurber	357	238
Samuel B. Munson, Jr.	364	247
Chas. H. Peak	379	268
James M. Pereles	381	270
Summary of judgments	382	271
Testimony of Nathat T. Fitch	382	272
Benj. F. Guyton	383	273
Lazarus Silverman	386	279
Joseph N. Barker (recalled)	394	288

	Original.	Print.
Testimony of James A. Clybourn	396	291
Wm. S. McMicken	397	292
Joseph N. Barker	409	307
L. C. Pain Freer	410	309
Sylvester Lind	412½	313
Record in partition suit of White *et al. vs.* White *et al.*	418	319
Decree appointing commissioners	419	320
Report of commissioners	425	326
Decree confirming commissioners report, &c.	437	332
Record of probate court of Lake county in matter of estate of Alexander White, deceased	440	334
Account, &c.	441	334
Decree	443	337
Exhibit 1—Telegram of Wm. Murphy to B. F. Guyton, Ap'l 15, 1878	444	338
2—Telegram of A. White to B. F. Guyton, Ap'l 23, 1878	444	338
3—Letter of A. White to B. F. Guyton, Feb. 4, 1878	444	339
4—Account of Importers' & Traders' National Bank with White (not set out)	445	339
5—Account of Traders' National Bank with White (not set out)	445	339
6—List of checks (not set out)	445	339
7—Account of Lake Forest Hotel and Manufacturing Co. (not set out)	445	339
8—Account of White with American Oleograph Co. (not set out)	445	340
9—Account of White with the estate (not set out)	445	340
10—Telegram of W. Murphy to B. F. Guyton, Ap'l 18, 1878	445	340
11—Telegram of A. White to B. F. Guyton, March 16, 1878	445	340
12—Letter of A. White to B. F. Guyton, March 22, 1878	445	340
13—Letter of A. White to B. F. Guyton, —— —, ——	446	341
14—Letter of A. White to B. F. Guyton, April 13, 1878	446	342
15—Letter of A. White to B. F. Guyton, —— —, ——	446	342
16—Letter of A. White to B. F. Guyton, April 4, 1878	447	343
17—Letter of Cotzhausen to Thurber, Feb. 13, 1878	447	343
18—Letter of Cotzhausen to American Oleograph Co., March 11, 1878	448	344
19—Letter of Cotzhausen to American Oleograph Co., May 30, 1878	448	344
20—Letter of White to Thurber, —— —, 1878	448	345
21— " " " Aug. 8, 1878	449	345
22— " " " —— —, ——	449	346
23— " " " Aug. 13, ——	449	346
24— " " " Aug. 19, 1878	450	346

	Original.	Print.
Exhibit 25—Letter of White to Thurber, —— —, ——	450	346
26— " " " Sept. 15, 1878	450	347
27— " " " Sept. 21, 1878	450	347
28— " " " Aug. 22, 1878	451	347
29— " " " —— —, ——	451	348
30—Telegram from White to Thurber, —— —, 1878	451	348
31— " " " —— —, ——	452	349
32— " " " —— —, ——	452	349
33—Agreement between White and Muson (not set out)	452	349
34—Letter of White to Munson, —— —, 1879	452	349
35— " " " —— —, ——	452	350
36— " " " —— —, ——	453	350
37— " " " —— —, ——	454	351
38— " " " —— —, ——	454	352
39— " " " —— —, ——	454	352
List of real estate offered Cotzhausen, &c.	456	353
Evidence for defendants	456	354
Exhibit 1—Statement of White's indebtedness to estate	457	354
2—Statement of amount drawn by White from Oleograph Co.	457	355
3—Munson's figures as to receipts, &c. (not set out)	458	355
Deed of trust of Alex. White to John D. Quinlan, Sept. 1, 1877	459	355
Deed of John D. Quinlan, trustee, to Chas. H. Quinlan, Oct. 14, 1879	469	360
Motion to modify certificate of evidence	476	365
Order overruling motion to modify certificate of evidence, &c.	477	365
Appeal bond	478	366
Clerk's certificate	481	367

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the judges thereof, on Thursday, the ninth day of April, in the adjourned March term of said court, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundred and ninth year.

WILLIAM H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

FREDERICK W. COTZHAUSEN
vs.
ALEXANDER WHITE, MARY S. WHITE, ELSIE WHITE, Annie C. White, James B. White, Margaret White, and Ann White. } In Chancery.

Be it remembered that on the twenty-eighth day of December, 1881, there was filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, a bond for costs, and also at the same time filed a transcript of record from the superior court of Cook county, Illinois, in said above-entitled cause; which said bond and transcript are, respectively, in the words and figures following, to wit:

2 *Bond for Cost-.*

UNITED STATES OF AMERICA, *Northern District of Illinois:*

Circuit Court. December Term, A. D. 1881. In Chancery.

FREDERICK W. COTZHAUSEN
v.
ALEXANDER —— *et als.* } No. 17743.

I hereby enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him I hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated this 28th day of December, A. D. 1881.

A. B. BALDWIN.

Filed Dec. 28, A. D. 1881.

W. H. BRADLEY, *Clerk.*

3 UNITED STATES OF AMERICA, } ss:
State of Illinois, County of Cook, }

Pleas before the Honorable George Gardner, one of the judges of the superior court of Cook county, in the State of Illinois, holding a branch court of said court, at a regular term of said superior court of Cook county, begun and holden at the court-house, in the city of Chicago, in said county and State, on the first Monday, being the fifth day of December, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States of America the one hundred*th* and sixth.

Present: The Honorable George Gardner, judge of the superior court of Cook county; Luther Laflin Mills, State's attorney;
4 Orrin L. Mann, sheriff of Cook county.
Attest: JOHN J. HEALY, *Clerk.*

Be it remembered that heretofore, to wit, on the eighth day of August, in the year of our Lord one thousand eight hundred and eighty-one, there were filed in the office of the superior court of Cook county a certain bill of complaint and bond for costs, which are in the words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

Superior Court of Cook County, of the — Term, A. D. 1881.

To the judges of said court, in chancery sitting:

Your orator, Frederick W. Cotzhausen, respectfully represents unto your honors that at the January term, A. D. 1881, of the superior court of said Cook county, to wit, on the eleventh day of January, 1881, the same being one of the regular days of said term, your orator recovered a judgment against Alexander White,
5 one of the defendants hereinafter named, for the sum of seven thousand two hundred and four dollars and thirty cents for the damages which he had sustained and the costs of suit and charges of your orator by him about his said suit in that behalf expended, which were adjudged to your orator in and by the said court whereof the said Alexander White was duly convicted, as by the record of said judgment in the office of the clerk of said court, reference being thereto had and to which for greater certainty your orator prays leave to refer, will more fully and at large appear.

And your orator further represents unto your honor- that the said judgment so recovered in manner aforesaid remaining in full force and effect and the costs and damages aforesaid unpaid and unsatisfied, your orator, on or about the twelfth day of January, in the year of our Lord one thousand eight hundred and eighty-one, for the purpose of obtaining satisfaction of the said judgment, sued and prosecuted out of said court a writ of *fieri facias,* directed to the

said sheriff of Cook county, that being the county in which
6 said defendant resided at the time of the issuing of said writ, by which said writ the said sheriff was commanded that of the goods, chattels, lands, and tenements of the defendant, Alexander White, in his county he cause to be made the sum of seven thousand two and eleven dollars and eighty cents, which your orator, in said superior court, recovered against the said defendant, Alexander White, and that he should have the money at the clerk's office of said court, at Chicago, in said county, in ninety days from the date thereof, to satisfy the judgment so recovered by your orator as aforesaid, and that he should have then and there that writ; and your orator further shows that the said writ of *fieri facias* before the delivery thereof to the said sheriff was duly endorsed, and was afterwards & on or about the first day of February, in the year of our Lord one thousand eight hundred and eighty-one, delivered to the said sheriff to be executed in due form of law.

And your orator further shows that the said sheriff of said county aforesaid, on or about the twelfth day of April, in the year of Lord one thousand eight hundred and eighty-one, returned on the said writ to him in that behalf directed and delivered as aforesaid that—

"The within-named defendant not found in my county, and no property being found in my county on which to levy I therefore return this writ no property found and no part satisfied.

ORRIN L. MANN, *Sheriff*,
By EMIL DIETZSCH, *Deputy*."

7 As by said writ of *fieri facias* and the directions and the return of the said sheriff endorsed thereon as aforesaid now on file in the office of the clerk of the said court will more fully appear, and to which or to a copy thereof your orator prays leave to refer.

And your orator further shows that the said judgment still remains in full force and effect, not reversed or satisfied or otherwise vacated, and that the said Alexander White — not paid the same to your orator, but has hitherto wholly neglected and refused so to do.

And your orator further shows that there is now actually and equitably due to your orator upon the aforesaid judgment the sum of seven thousand two hundred and eleven dollars and eighty cents, together with the interest thereon from the eleventh day of January, one thousand eight hundred and eighty-one, over and above all claims of said defendant by the way of set-off or otherwise.

And your orator further states that previous to the time of rendition of the said judgment the said defendant, Alexander
8 White, was the owner in fee simple of the following-described real estate, situate in the county of Cook and State of Illinois, viz: Sublots two (2) of lot four (4), block thirty-three (33), in the original town of Chicago; lots one (1) and two (2) of sublot five (5) of lot four (4), in block thirty-three (33), original town of Chicago; the south seventeen (17) feet of lots twenty-seven (27), lots

thirty (30), thirty-one (31), thirty-four (34), thirty-five (35), thirty-eight (38), thirty-nine (39), forty-two (42), and forty-three (43), in blocks forty-six (46), forty-seven (47), and fifty-eight (58), in the canal trustees' subdivision of the west half of section twenty-seven (27), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian; also the north ten (10) acres of the south twenty (20) acres of the southeast quarter of the northeast quarter of section seventeen (17), township thirty-eight (38) north, range fourteen (14) east, of the third principal meridian; also lots three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), and eleven (11), in H. M. Thompson's subdivision of lots
9 twenty (20), twenty-one (21), twenty-two (22), and twenty-three (23), in block twenty-four (24), Elston's addition to Chicago; also lots fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty (20), in block fourteen (14); lots eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), and thirty-one (31), in block fifteen (15); lots twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), and forty-five (45), in block sixteen (16), in Adam Smith's subdivision, in the southwest quarter of section thirty-six (36), township thirty-nine (39) north, range thirteen (13); also lots forty-nine (49), fifty (50), fifty-one (51), fifty-two (52), fifty-three (53), and the east eighteen (18) feet of lot fifty-four (54), in block sixty-one (61), in the canal trustees' subdivision of section seven (7), township thirty-nine (39) north, range fourteen east, of the third principal meridian.

Your orator further states that prior to the rendition of the above judgment, but after the indebtedness upon which the same
10 was rendered had accrued, viz., on or about the sixteenth day of July, A. D. 1879, the said defendants, Alexander White, made two pretended conveyances in fee, by one of which he pretended to convey in fee to Elsie White, Mary S. White, Annie C. White, and James B. White that part of the real estate hereinabove described, which is situate in the original town of Chicago and in the canal trustees' subdivision of the west half of section twenty-seven (27), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian, for a pretended consideration of fifty-six thousand eight hundred and fifty-nine and $\frac{20}{100}$ dollars ($56,859.20), and by the other of said pretended conveyances he pretended to convey to Margaret White all the remainder of the real estate hereinabove described for a pretended consideration of fourteen thousand two hundred and fourteen and $\frac{80}{100}$ dollars ($14,214.80).

And your orator further alleges that neither of the aforesaid pretended conveyances were real or *bona fide*, but were both colorably and were shams and made with the intention and
11 purpose of defrauding your orator out of his just demands and preventing him from enforcing the collection thereof, and both of pretended conveyances were made by the said Alexander White and received by the several grantees therein for the pur-

pose of getting the said real estate beyond the reach of your orator, and that neither the said Margaret White nor the said Elsie White, Mary S. White, Annie C. White, nor James B. White, either or any of them, gave any consideration for the said pretended conveyances to them respectively made, and that the said real estate is now held by the said Margaret White, Elsie White, Mary S. White, Annie C. White, and James B. White (all of whom are near relatives of said defendant, Alexander White) in trust for him, the said Alexander White, and for his use and benefit and for the purpose of preventing a sale of the same under and by virtue of said execution.

And your orator well hoped that the said defendant, Alexander White, would have paid to your orator the amount due him
12 on said judgments or would have applied for that purpose any property, money, debts, or other equitable interests or things in action belonging to him or in which he was in any way interested as in equity and good conscience he ought to have done.

But now so it is, may it please your honors, that the said defendants, combining and confederating together and with divers other persons to your orator unknown, but whose names when discovered he pray- may be inserted herein with proper and apt words to charge them, and contriving how to injure and defraud your orator in the premises, neglects or refuses to pay the amount so due to your orator on his said judgment or to apply for that purpose any property, money, debts, or other equitable interests on things in action belonging to the said defendant, Alexander White, and for reason thereof the said defendant sets up a variety of unfounded pretenses; all of which actings, doings, neglects, and pretenses are contrary to equity and good conscience and tend to the manifest wrong
13 and injury of your orator in the premises.

In tender consideration whereof, and forasmuch as your orator is remediless in the premises by the strict rules of the common law, and cannot have adequate relief save in a court of equity, where matters of this and a similar nature are properly co-nizable and relievable:

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the matters and things hereinbefore stated and charged, and particularly to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are required to answer—

That is to say, the said defendants may fully set forth and
14 discover, according to the best of their knowledge, remembrance, information, and belief, the nature and situation, amount and value, of the property, interest, and effects of the said defendant, Alexander White, including all things in action of whatever nature or kind, with all the particulars relating thereto, and that they may answer and state whether at the time of filing this your orator's bill of complaint the said defendant, Alexander White,

had not debts due to him to a considerable amount; and, if so, that they may state particularly the amount of such debts, respectively, and from whom the same are due and what security is held therefor; and also that they may state which and what amount of said debts are good and collectable and what amount bad or doubtful, and whether at the time of filing this your orator's bill of complaint they had not some property, real or personal, in law or equity, belonging to him or held in trust for him, or in which he has some beneficial interest of some kind or description; and, if so, that they may state and set forth a full, true, and particular account
15 and the nature and value of his interest therein, and that they may also state whether they had not money of some kind in their possession or under their control or deposited to his credit or for his use or in some way or manner held for his use and benefit; and, if so, that they may state and set forth particularly the amount thereof and how and by whom the same is held, and that they may also state whether they have any other equitable interest or thing in action or other means belonging to him or to which he is in any way interested whereby he could pay any part of the amount so as aforesaid due to your orator upon his said judgment against him, the said defendant, Alexander White.

And if the said defendant last named has made any sale, assignment, or transfer of his property and effects, or any part thereof, that then the said defendants may state and set forth, each for himself jointly or separately, generally but not in items, what property or effects have been so sold, assigned, or transferred, and the
16 value thereof, and particularly when and to whom and for what purpose and upon what terms and conditions such sale, assignment, or transfer was made, and what has been done under such sale, assignment, or transfer, and what has been done with the property or effects so sold, assigned, or transferred, and the avails thereof; and that the said defendants may specially state and set forth, each for himself, jointly or separately, all the facts and circumstances attending the two pretended conveyances aforesaid, the amount of money actually paid thereon by the said Margaret White, Elsie White, Mary S. White, Annie C. White, and James B. White, or any or either of them, and how and in what manner the payments were made or were to be made, from whence the funds to make such payments were derived, and the purpose of said pretended conveyances and the consideration therefor, fully and in detail, and that the two pretended conveyances aforesaid, viz., the one to said Margaret White and the other to the said Elsie White, Mary S. White, Annie C. White, and James B. White, may be va-
17 cated, set aside, and declared null and void as to your orator, and that the real estate hereinabove described may be declared subject to the said judgment of your orator and sold to pay and satisfy the same, and that the said defendants, or some of them, may be decreed to pay your orator the amount so as aforesaid due to him for principal and interest on his said judgment, together with your orator's costs and charges in this behalf sustained, and may be decreed to apply for that purpose any money or property,

real or personal, in law or equity, debts, choses in action, or equitable interests belonging to said defendant, Alexander White, or held in trust for him, or in which he is in any way or manner *is* beneficially interested; and that the said defendant may be injoined and restrained from selling, assigning, transferring, delivering, negotiating, discharging, receiving, collecting, incumbering, or in any way or manner disposing of or intermeddling with any debts or demands due to said Alexander White, or any bills, bonds, notes, drafts, checks, book accounts, mortgages, judgments, or other
18 debts due to said Alexander White, or *any bills, bonds, notes, drafts, checks, book accounts, mortgages, judgments, or other debts due to said Alexander White*, whether in his possession or held by some other person in trust for him or to his use or benefit; and also from selling, assigning, transferring, or in any manner encumbering or disposing of or intermeddling with any money in coin, bank bills, drafts, or checks belonging to said Alexander White, whether in his possession or held by any person in trust for his use or benefit, or any stock or interest in any private or incorporated company, or any property, real, personal, things in action, or chattels, real, held by him or by any other person for him, or in which he has any interest whatever, except when such trust has been created by or the fund so held in trust has proceeded from some person other than the said defendant, Alexander White.

And your orator further shows unto your honors that on or about the first day of January, and before that time, in the year of our Lord one thousand eight hundred and eighty-one, the said de-
19 fendant, Alexander White, was engaged in the mercantile business at the city of Chicago aforesaid, and that your orator is informed and believes that in the course of said mercantile business of the said defendant, Alexander White, divers persons became indebted to him to a large amount, and that the said defendant last named, at the time of filing this your orator's bill of complaint, had debts due to him, and for which he holds divers securities and evidences to a large amount, and divers goods, wares, and merchandise and other articles of personal property which belong to him or in which he in some way or manner is beneficially interested, and that he has equitable interests and things in action of some nature or kind which might and ought to be applied to the payment of your orator's said judgment against him, the said defendant, Alexander White.

And your orator also charges that the said defendant, Alexander White, is owner of or in some way or manner beneficially interested in some real estate in this or some other State, or some chattels, real, of some nature or kind, or some contract or agreement relat-
20 ing to real estate, or the rents, issues, and profits of some real estate, and also that the said defendant, Alexander White, is owner of or in some way beneficially interested in the stock of some company incorporated or unincorporated, or in the profits of some company or copartnership, and also that he has in his possession at the time of filing this your orator's bill of complaint some money in coin or bank bills, or that he has money deposited in some bank

or elsewhere to his credit, or that he has money or securities for the payment of money held by some other person in trust or otherwise for his benefit.

And if the said defendant, Alexander White, has made any sale, assignment, or transfer of his property or effects or any part thereof your orator expressly charge- that he believes such sale, assignment, or transfer is merely colorable, and made with a view of protecting the property or effects of said defendant, Alexander White, so assigned, and placing the same beyond the reach of your orator's said judgment, and enabling the said defendant, Alexander White,
21 to control and enjoy the same and the avails thereof, or to hinder and delay your orator in the collection of his debt now in judgment as aforesaid, and that so it would appear if the said defendant, Alexander White, would state and set forth when and to whom such sale, transfer, or assignment was made, and what was the amount, in value, of the property or effects so sold, assigned, or transferred, and what were the terms upon which said sale, transfer, or assignment was made, and what disposition has been made of the property or effects so sold, assigned, or transferred and in whose possession the same now is, or what has been done with the avails thereof, and your orator claims a full and complete discovery of all such property, effects, and things in action belonging to the said defendant, Alexander White, and of all trusts whereby any property, debts, or effects are held for the use or benefit of the said defendant last named, and of every sale, assignment, or transfer which the said defendant last named has made of his property, debts, or other effects, and of the person or persons to whom
22 such sale, assignment, or transfer has been made, the amount and value of the property, debts, or other effects so sold, assigned, or transferred, and the trusts and other conditions upon which such sale, assignment, or transfer was made, and all the facts and circumstances relating thereto, and particularly what is the situation of the property, debts, or other effects sold, assigned, or transferred at the time of filing this your orator's bill of complaint.

And your orator further shows unto your honor that he has reason to believe and does believe that the said defendant last named has property and other equitable interests, things in action, or effects of the value of more than ten thousand dollars, exclusive of all prior first liens thereon, and which your orator has been unable to reach by execution on said judgment against the said defendant last named, and that this your orator's bill of complaint is not exhibited by collusion with the said defendant or with any other person, or for the purpose of protecting the property or effects
23 of said defendant, Alexander White, against the claims of other creditors, but for the sole purpose of compelling payment and satisfaction of the judgment so as aforesaid recovered by your orator against the defendant, Alexander White.

And that the said defendant last named may also be in like manner prohibited from making any assignment of his property and from confessing any judgment for the purpose of giving preference to any other creditor over your orator, and from doing any

other act to enable other creditors to obtain his property, and that a receiver may be appointed, according to the course of practice of this court and with the usual powers of receivers in like cases, of all the property, equitable interests, things in action, and effects of the said defendant, Alexander White, and that said defendants, Margaret White, Elsie White, Mary S. White, Annie C. White, and James B. Wright, may be enjoined and restrained from conveying, encumbering, or in any way disposing of the above-described real estate embraced in said pretended conveyance, or any part thereof;

24 And that your orator may have such further or such other relief in the premises as the nature of his case shall require and as shall be agreeable to equity and good conscience:

May it please your honor to grant unto your orator the people's credit of injunction, issuing out of and under the seal of this honorable court, to be directed to the said defendants, Alexander White, Margaret White, Elsie White, Mary S. White, Annie C. White, and James B. White, and to their counsellors, attorneys, solicitors, trustees, and agents therein, and thereby commanding and strictly enjoining the said defendants and the persons above mentioned in manner aforesaid.

And may it please your honor- to grant unto your orator the people's writ of summons, issuing out of and under the seal of this honorable court, to be directed to the said defendants, Alexander White, Margaret White, Elsie White, Mary S. White, Annie C. White, and James B. White, therein and thereby commanding them

25 and each of them, on a certain day and under a certain penalty to be therein inserted, that they personally be and appear before this honorable court on the first day of the next term thereof, to be held at the court-house, in the county of Cook aforesaid, then and there to answer all and singular the premises and to stand to and abide by and perform such order and decree as to your honors shall seem agreeable to equity and good conscience.

And your orator will ever pray, etc.

FREDERICK W. COTZHAUSEN,
By A. B. BALDWIN, *His Solicitor.*

A. B. BALDWIN,
Complainant's Solicitor.

26 *Security for Costs.*

STATE OF ILLINOIS, } *ss:*
County of Cook, }

Superior Court of Cook Co.

FREDERICK W. COTZHAUSEN
v.
ALEXANDER WHITE, MARGARET WHITE, ELSIE WHITE, MARIE S. WHITE, ANNIE C. WHITE, and JAMES B. WHITE.

I, —— ——, do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid

all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State.

Dated this 8th day of August, 1881.

A. B. BALDWIN.

And on the day and year last aforesaid, to wit, August 8th, A. D. 1881, there issued out of the office of the clerk of said court the people's writ of summons; which writ, with the return of the
27 sheriff thereon endorsed, is in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
Cook County, }

The people of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon Alexander White, Margaret White, Elsie White, Mary S. White, Annie C. White, and James B. White, if they shall be found in your county, personally to be and appear before the superior court of Cook county on the first day of the term thereof to be held at the court-house, in Chicago, in said Cook county, on the first Monday of September next, to answer unto Frederick W. Cotzhausen in his certain bill of complaint filed in said court on the chancery side thereof.

And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.
28 Witness John J. Healey, clerk of our said court, and the seal thereof, at Chicago, aforesaid, this 8th day of August, A. D. 1881.

[SEAL.] JNO. J. HEALEY, *Clerk.*

Served the within writ on the within-named James B. White by delivering a copy of the same to him this 10th day of August, 1881.

O. L. MANN, *Sheriff,*
By T. E. STACY, *Deputy.*

The within-named defendants not found in my county the 5th day of September, 1881.

ORRIN L. MANN, *Sheriff,*
By EMIL DIETZSCH, *Deputy.*

Paid, $6.00.

29 And afterwards, to wit, on the 5th day of September, in the year last aforesaid, to wit, A. D. 1881, there was filed in the office of the clerk of said court a certain appearance, which is in words and figures as follows, to wit:

STATE OF ILLINOIS, *County of Cook:*

Superior Court of Cook County.

F. W. COTZHAUSEN *vs.* ALEX. WHITE *et al.*

We hereby enter the appearance of James B. White, one of the defendants in above suit.

Chicago, Sept. 5, 1881.

JOS. N. & F. W. BARKER.

And afterwards, to wit, on the 22nd day of September, in the year last aforesaid, to wit, A. D. 1881, there issued out of the office of the clerk of said court the people's *alias* writ of summons, which writ, with the return of the sheriff thereon endorsed, is in words
30 and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
Cook County, }

The people of the State of Illinois to the sheriff of said county, Greeting:

We again command you that you summon Alexander White, Margaret White, Elsie White, Mary S. White, and Annie C. White, impleaded with James B. White, if they shall be found in your county, personally to be and appear before the superior court of Cook county on the first day of the term thereof to be held at the court-house, in Chicago, in said Cook county, on the first Monday of October next, to answer unto Frederick W. Cotzhausen in his certain bill of complaint filed in said court on the chancery side thereof.

And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness John J. Healey, clerk of our said court, and the
31 seal thereof, at Chicago aforesaid, this 22 day of September, A. D. 1881.

[SEAL.] JNO. J. HEALEY, *Clerk.*

Served the within upon the within-named Marie S. White by leaving a copy thereof for her at her usual place of abode with Elsie White, a person of the age of ten years and upward, and the same time making known to her the contents thereof, this the 23d day of September, 1881; also served the within writ upon the within-named Elsie White and Annie C. White by delivering a copy to each of them this the 23d day of September, 1881.

Served the within writ on the within-named Alexander White by delivering a copy of the same to him this 3d day of October, 1881. The other named defendant not found in my county.

O. L. MANN, *Sheriff,*
By T. E. STACEY, *Deputy.*

32 And afterwards, to wit, on the 9th day of November, in the year of our Lord one thousand eight hundred and eighty-one, there were filed in the office of the clerk of said court certain answers, which are in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County. November Term. In Chancery.

FREDERICK W. COTZHAUSEN *v.* ALEXANDER WHITE *et al.*

The answer of Alexander White, one of these defendants, to the creditors' bill of complaint of Frederick W. Cotzhausen, the complainant.

This defendant, reserving to himself all right of exceptions to said bill of complaint, for answer thereto says that at one time and long prior to the judgment in favor of Frederick W. Cotzhausen
33 against Alexander White, this defendant, he, the said Alexander White, was the owner of the following-described real property, to wit: Sublot two (2) of lot four (4) of block thirty-three (33), in the original town of the city of Chicago; also lots one (1) and (2) of sublot five (5) of lot four (4) of block thirty-three (33), in the original town of the city of Chicago; also the south seventeen (17) feet of lot twenty-seven (27), lots thirty (30), thirty-one (31), thirty-four (34), thirty-five (35), thirty-eight (38), thirty-nine (39), forty-two (42), and forty-three (43), in blocks forty-six (46), forty-seven (47), and fifty-eight (58), in the canal trustees' subdivision of the north one-half of section twenty-seven (27), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian; also the north ten (10) acres of the south twenty (20) acres of the southeast quarter of the northeast quarter of section seventeen (17), in township thirty-eight (38) north, of range fourteen (14) east, of the third principal meridian; also lots fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty
34 (20), in block fourteen (14), and lots eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), and thirty-one (31), in block fifteen (15), and lots twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), and forty-five (45), in block sixteen (16), in Adam Smith's subdivision of the south one-half of the north one-half of the southwest quarter and the southwest quarter of section thirty-six (36), in township thirty-nine (39) north, range thirteen (13) east, of the third principal meridian; also lots three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), and eleven (11), in H. M. Thompson's subdivision of lots twenty (20), twenty-one (21), twenty-two (22), and twenty-three (23), in block twenty-four (24), of Elston's addition to Chicago; also lots forty-nine (49), fifty (50), fifty-

one (51), fifty-two (52), fifty-three (53), and the east eight (8) feet of lot fifty-four (54), in block sixty-one (61), of the canal trustees' subdivision of section seven (7), in township thirty-nine (39)
35 north, range fourteen (14) east, of the third principal meridian, all of the above-described real property situate in the county of Cook, in the State of Illinois.

This defendant, Alexander White, further answering, says that he was the administrator of the estate of his father, Alexander White, deceased, who left a large amount of money and securities, all of which passed into the hands of this defendant, Alexander White, as such administrator, to wit, of the cash value of over two hundred thousand dollars, of which sum the said Alexander White appropriated for his own use and did use more than the sum of one hundred and twenty-nine thousand dollars, of which sum Elsie White, Mary S. White, Annie C. White, James B. White, and Margaret White, defendants to said creditors' bill, were entitled to five-sixths part thereof as heirs of Alexander White, deceased, less the dower of Ann White, their mother, and widow of Alexander White, deceased, being the sum of seventy-one thousand and seventy-
36 four dollars ($71,074.00); and, further, that upon an accounting with them on the sixteenth day of July, A. D. 1879, the above sum was found to be due them by said Alexander White, this defendant, and in order to pay the same and in satisfaction of said indebtedness the said Alexander White, this defendant, made and delivered to them his warranty deeds for the real property above described and referred to in said creditors' bill and dated the sixteenth day of July, A. D. 1879.

This defendant, Alexander White, further answering, says that these conveyances were real and *bona fide* conveyances, and made to pay and satisfy real and *bona fide* indebtedness of the sum of seventy-one thousand and seventy-four dollars, which sum said Alexander White owed to them, the said Elsie White, Mary S. White, Annie C. White, James B. White, and Margaret White.

This defendant, Alexander White, further answering, says that of the sum of one hundred and twenty-nine thousand seven hun-
37 dred and sixty-nine $\frac{83}{100}$ dollars ($129,769.83) received by him as the administrator of the estate of Alexander White, deceased, and appropriated for his own use, Ann White, his mother and widow of Alexander White, deceased, was entitled to the one-third part thereof, viz., the sum of forty-three thousand two hundred and fifty-six & $\frac{61}{100}$ dollars ($43,256.61), being her dower interest in said sum of one hundred and twenty-nine thousand seven hundred and sixty-nine $\frac{83}{100}$ dollars, and that upon an accounting with Ann White, to wit, on the 21st day of July, A. D. 1879, the sum of forty-three thousand two hundred and fifty-six $\frac{56}{100}$ dollars ($43,256.56) was found to be due said Ann White by said Alexander White, this defendant, and for the above indebtedness the said Alexander White made and delivered to the said Ann White his judgment note, dated the 21st day of July, 1879, for the sum of forty-three thousand two hundred and fifty-six $\frac{56}{100}$ dollars ($43,256.56), payable one day after the date

thereof to the order of said Ann White; that, further, said
38 judgment note was given for a real and *bona fide* indebtedness of forty-three thousand two hundred and fifty-six $\frac{56}{100}$ dollars, duly received and used by said Alexander White, this defendant; and, further, that on the 4th day of September, A. D. 1879, in the circuit court of Cook county, in the State of Illinois, judgment was entered up against Alexander White, this defendant, in favor of said Ann White for the sum of forty-three thousand eight hundred & seven $\frac{50}{100}$ dollars (43,807.50), being the amount due on the above-described judgment note, with interest, costs, etc.

This defendant, Alexander White, further answering, says that he assigned, transferred, and set over to Ann White, at various times & long prior to the judgment on which this creditors' bill is filed, the following-described personal and real properties as collateral security for the above-described judgment note, the proceeds of which were to apply on said judgment note, to wit:

39 1. A promissory note, dated June 12, '73, for $4,000, made by R. Fowler (now deceased), payable sixty days after the date thereof, and on which $2,000 remained unpaid when assigned.

2. A promissory note, dated July 6, '75, for $60, made by C. T. Brothers, payable 90 days after the date thereof.

3. A promissory note, dated July 10, '75 for $150, made by John Taylor, payable on demand.

4. A due bill, dated July 19, '75, for $200, made by John Reid, payable about 30 days after the date thereof.

5. A promissory note, dated Sept. 4, '75, for $1,727.94, made by John Reid, payable on demand.

6. A promissory note, dated Oct. 1, '75, for $300, made by Alexander Sullivan, payable one year after the date thereof.

7. A promissory note, dated Feb'y 1, '76, for $25, made by W. H. Wilcox, payable on demand.

8. A promissory note, dated March 7, '76, for $75, made by H. G. Howe, payable one day after the date thereof.

40 9. A promissory note, dated Aug. 8, '76, for $220, made by J. F. Gookins, payable 60 days after the date thereof.

10. A promissory note, dated M'ch 1, '77, for $454.85, made by S. B. Munson, Jr., payable one year after the date thereof.

11. A promissory note, dated M'ch 8, '77, for $125, made by C. E. & M. E. Quinlan, payable four months after the date thereof.

12. A promissory note, dated April 12, 1877, for $100, made by C. E. & M. E. Quinlan, payable ten days after the date thereof.

13. A promissory note, dated Sept. 1, '77, for $5,000, made by the Jenison Heating and Ventilating Co., payable one year after the date thereof.

14. A promissory note, dated Sept. 28, '77, for $13.20, made by M. A. Wakefield, payable on demand.

15. A due bill, dated Dec, 7, '77, for $458.73, made by S. B. Munson, Jr.

16. A due bill, dated May 15th, '78, for $484.30, made by S. B. Munson, Jr., on which $100 had been paid when assigned.

41 17. A due bill, dated July 26, '78, for $50, made by the Jenison H. & Ventilating Co.

18. A promissory note, dated Dec. 20, '78, for $1,800, made by S. B. Munson, Jr., payable thirty days after the date thereof; all of which above-described notes or due bills are bad or doubtful.

18½. Also a claim against the American Oleograph Co. of Wisconsin for about $5,000.

19. Also the certificate No. 438, dated Dec. 8, '79, for $1,419.25, of the receiver of the City National Bank of Chicago, on which about $300 remains unpaid.

20. Also a claim against one Horace B. Fry.

21. Also a claim against Kountze Brothers.

22. Also one hundred and fifty (150) shares of the capital stock of the American Ole-graph Company of Wisconsin.

23. Also eight hundred and fifty-seven (857) shares of the capital stock of the Jenison Heating & Ventilating Company of Illinois.

24. Also two hundred and twenty-three (223) shares of the
42 capital stock of the Au Sable Quarry Company of Illinois.

25. Also mortgage bonds of the par value of $1,800 of the Au Sable Quarry Company of Illinois.

All of which above-mentioned claims, stocks, bonds, etc., are either worthless or of little value.

26. Also lot ten (10), block four (4), in Stone's subdivision of the north fifteen (15) acres of the west half of the S. W. ¼ of sec. 34, 39, 14, in Cook county, Illinois, which lot said Alexander White, this defendant, conveyed to Ann White by deed, dated August 29, '79. This lot was first, however, conveyed to one William S. McMickell to indemnify him for signing a certain bond for Alexander White, this defendant. Said McMickell thus became liable for the payment of some eleven hundred ($1,100) dollars. The said McMickell then conveyed the said lot to one Thomas W. Phillips, who now holds the legal title thereof as trustee, first to pay the said eleven hundred dollars & then to pay the surplus, if any, to said Ann White.

43 27. This defendant, Alexander White, further answering, says that at one time he was the owner of the undivided one-half of block four (4), in the village of Jefferson, Cook county, Illinois, and that long prior to the taking of the judgment on which this creditors' bill is filed he conveyed the said real property to one Joseph N. Barker for payment for services rendered.

28. Also that said Alexander White now holds an unrecorded quitclaim deed of the undivided one-half of the north one hundred and twenty acres of the east half of section 19, 32, 9, situate in Will county, Illinois, and still unrecorded, as the title of the same is deemed "doubtful."

29. Also that he, at one time, was the owner of the south 20 acres of the west half of the southwest quarter of section 30, 39, 13, in the town of Cicero; also of the east half of the S. E. ¼ of section 22, 38, 13, in the town of Lake, both situate in Cook county, Illinois, and that long prior to the entering of judgment on which
44 this creditors' bill is filed he, the said Alexander White, this defendant, mortgaged the two above-described properties,

each for the sum of twenty thousand dollars, to the Protection Life Insurance Company of Illinois, and both of which said mortgages have since been foreclosed. The fee of the E. ½ of the S. E. ¼ of sec. 22, 38, 13 was in one Sylvester Lind, as trustee for Alexander White.

This defendant, Alexander White, further answering, says that the above is a full, true, particular, and detailed account of all properties, both personal and real, which have ever belonged to him; that he has no interest in any other properties, real or personal, in law or equity, or in any held in trust for him, or in which he has any beneficial interest of any kind, nature, or description whatsoever; that he has no money of any kind in his own possession or under his own control or deposited to his own credit or for his own use or in any way or manner held for his own use and benefit.

45 This defendant, Alexander White, denies that he is now or ever has been engaged in the mercantile business at the city of Chicago, as charged in said creditors' bill.

And this defendant, Alexander White, denies all & all manner of unlawful combination and confederacy wherewith he is by said creditors' bill charged, without this, that there is any other matter or thing in the complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, & prove as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

ALEXANDER WHITE.

JOSEPH N. & F. W. BARKER,

46 *Sol'l'rs for said Defendant.*

STATE OF ILLINOIS, } ss:
County of Cook, }

On this 8th day of November, A. D. 1881, before me personally appeared Alexander White and made oath that he has read the above answer subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

[SEAL.] JOSEPH N. BARKER,
Notary Public.

47 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County. November Term.

The joint and several answers of Elsie White, Mary S. White, Anna C. White, James B. White, and Margaret White, the defendants to the creditors' bill of complaint of Frederick W. Cotzhausen, the complainant.

These defendants, now and at all times hereafter saving to themselves all manner of benefit and advantage of exceptions which can or may be had or taken to the many uncertainties, errors, and other imperfections *to* said bill contained, for answer thereunto or to so much thereof as these defendants are advised it is or are material or necessary for them to make answer unto, answering, say that they, the said Elsie White, Mary S. White, Annie C. White, and James B. White, admit that at one time and long prior to the judgment against Alexander White he, the said Alexander
48 White, was the owner of the following described property, to wit: Sublot two (2) of lot four (4) of block thirty-three (33) in the original town of the city of Chicago; also lots one (1) and two (2) of sublot five (5) of lot four (4) of block thirty-three (33), in the original town of the city of Chicago; also the south seventeen (17) feet of lot twenty-seven (27), lots thirty (30), thirty-one (31), thirty-four (34), thirty-five (35), thirty-eight (38), thirty-nine (39), forty-two (42), and forty-three (43), in blocks forty-six (46), forty-seven (47), and fifty-eight (58), in the canal trustees' subdivision of the north half of section twenty-seven (27), township thirty-nine (39) north, range fourteen (14) east, of the third (3) principal meridian, all situate in Cook county, State of Illinois.

These defendants, Elsie White, Mary S. White, Annie C. White, and James B. White, further answering, say that said Alexander White was the administrator of the estate of his father, Alexander White, deceased, who left a large amount of money and securities, all of which passed into the hands of Alexander
49 White, as such administrator, to wit, of the cash value of over two hundred thousand dollars, of which sum the said Alexander White appropriated for his own use and did use more than the sum of one hundred and twenty-nine thousand dollars, of which sum we, these defendants, were entitled to four-sixths thereof as heirs of Alexander White, deceased, less the dower of Ann White, our mother and widow of Alexander White, deceased, being the sum of fifty-six thousand eight hundred and fifty-nine $\frac{20}{100}$ dollars ($56,859.20); and, further, that upon an accounting with us on the 16th day of July, A. D. 1879, that sum was found to be due us by said Alexander White, and in order to pay the same and in satisfaction of said indebtedness the said Alexander White made and delivered to us his warranty deed for the real property above described and referred to in said creditors' bill; that said conveyance was a real and *bona*

fide conveyance and made to pay and satisfy a real and *bona*
50 *fide* indebtedness of fifty-six thousand eight hundred and fifty-nine & $\frac{20}{100}$ dollars ($56,859.20), which sum said Alexander White owed to us, the said defendants.

The said Margaret White, one of said defendants, admits that at one time, and long prior to the judgment in favor of Frederick W. Cotzhausen against Alexander White, he, the said Alexander White, was the owner of the following-described real property, to wit, the north ten (10) acres of the south twenty (20) acres of the southeast quarter of the northeast quarter of section seventeen (17), in township thirty-eight (38) north, of range fourteen (14) east, of the third principal meridian; also lots fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty (20), in block fourteen (14), and lots eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), in block fifteen (15), and lots twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), and forty-five (45), in block sixteen (16), in Adam Smith's subdivision of the south half of the south half of the southwest quarter, and the south-
west quarter of section thirty-six (36), in township thirty-
51 nine (39) north, range thirteen (13) east, of the third principal meridian; also lots three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), and eleven (11), in H. M. Thompson's subdivision of lots twenty (20), twenty-one (21), twenty-two (22), and twenty-three (23), in block twenty-four (24), of Elston's addition to Chicago; also lots forty-nine (49), fifty (50), fifty-one (51), fifty-two (52), fifty-three (53), and the east eight (8) feet of lot fifty-four (54), in block sixty-one (61), of the canal trustees' subdivision of section seven (7), in township thirty-nine (39) north, of range fourteen (14) east, of the third principal meridian, all situate in Cook county, State of Illinois.

This defendant, Margaret White, further answering, says that said Alexander White was the administrator of the estate of his father, Alexander White, deceased, who left a large amount of money and securities, all of which passed into the hands of Alexander White
as such administrator, to wit, of the cost value of over two
52 hundred thousand dollars, of which sum the said Alexander White appropriated for his own use and did use more than the sum of one hundred and twenty-nine thousand dollars, and of which sum I, this defendant, was entitled to one-sixth part thereof as heir of Alexander White, deceased, less the dower of Ann White, my mother and widow of Alexander White, deceased, being the sum of fourteen thousand two hundred and fourteen $\frac{80}{100}$ dollars ($14,214.80); and, further, that upon an accounting with me on the sixteenth day of July, A. D. 1879, that sum was found to be due me by said Alexander White, and in order to pay the same and in satisfaction of said indebtedness the said Alexander White made and delivered to me his warranty deed for the real property above described and referred to in said creditors' bill; that said conveyance was a real and *bona fide* conveyance and made to pay and satisfy a real

and *bona fide* indebtedness of fourteen thousand two hundred and fourteen $\frac{80}{100}$ dollars ($14,214.80), which sum said Alexander White owed to me, the said defendant.

53 These defendants, Elsie White, Mary S. White, Anna C. White, James B. White, and Margaret White, deny that said complainant should have the relief sought, for the reason that Alexander White owed them the money, as above stated, and that the said conveyances were made to satisfy his indebtedness, and that the sales were *bona fide* ones and for fair, real, and valuable considerations to pay *bona fide* and real indebtedness.

These defendants neither admit nor deny that Alexander White was engaged in mercantile business, they having no knowledge on the subject, but verily believe that he was not so engaged.

These defendants had or have no knowledge as to any debts, securities, or stocks due or owing to Alexander White, nor of any property (real or personal) held or owned by him, nor of any beneficial interest therein, nor of any profits thereof, nor of any money in coin or bank bills, nor of any deposits in any bank or elsewhere to his credit or held by some other person in trust or otherwise for his benefit.

54 These defendants well know, however, that said Alexander White was indebted to his mother, Ann White, in a large amount, and that he still owes her all that large amount for which she has taken judgment.

These defendants, further answering, say that they have fully stated all the circumstances within their knowledge as to how the indebtedness to them by Alexander White accrued, which was that the money went into his hands as administrator, and that he, for his own uses and purposes, spent the same, and, being unable to pay them otherwise, conveyed said real property to them in satisfaction of the indebtedness, and that they paid a good and valuable consideration for the said land described in said deeds to them.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the complainant's said bill of complaint contained ma-

55 terial or necessary for the defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JAMES B. WHITE.
ANNA C. WHITE.
MARGARET WHITE.

JOSEPH N. & F. W. BARKER,
Sol't'rs for said Defendants.

STATE OF ILLINOIS, } ss:
County of Cook, }

On this seventeenth day of November, A. D. 1881, before me personally appeared James B. White, Margaret White, and Anna, C. White and made oath that they have heard read the above answer subscribed by them and know the contents thereof, and that the same is true of their own knowledge except as to matters
56 therein stated to be on their information and belief, and as to those matters they believe them to be true.

Subscribed and sworn to before me this seventh day of November, 1881.

[SEAL.] JOSEPH N. BARKER,
Notary Public.

57 And afterwards, to wit, on the 9th day of December, in the year last aforesaid, to wit, A. D. 1881, Elsie and Mary S. White, two of the defendants, by Joseph N. & F. W. Barker, their solicitors, filed in the office of the clerk of said court their certain answer, which is in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Superior Court of Cook County.

The joint and several answers of Elsie White and Mary S. White, the defendants, to the creditors' bill of complaint of Frederick W. Cotzhausen, the complainant.

These defendants, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exceptions which can or may be had or taken to the many uncertainties, errors, & other imperfections *to* said bill contained, for answer thereunto or to so much and such parts thereof as these defendants
58 are advised it is or are material or necessary for them to make answer unto, answering, say:

That they, the said Elsie White and Mary S. White, admit that at one time and long prior to the judgment against Alexander White he, the said Alexander White, was the owner of the following-described property, to wit:

Sublot two (2) of lot four (4) of block thirty-three (33) in the original town of the city of Chicago; also lots one (1) and two (2) of sublot five (5) of lot four (4) of block thirty-three (33), in the original town of the city of Chicago; also the south seventeen (17) feet of lot twenty-seven (27), lots thirty (30), thirty-one (31), thirty-four (34), thirty-five (35), thirty-eight (38), thirty-nine (39), forty-two (42), and forty-three (43), in block- forty-six (46), forty-seven (47), and fifty-eight (58) in the canal trustees' subdivision of the west half of section twenty-seven (27), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian, all situate in Cook county, State of Illinois.

59 These defendants, Elsie White and Mary S. White, further answering, say that said Alexander White was the administrator of the estate of his father, Alexander White, deceased, who left a large amount of money and securities, all of which passed into the hands of Alexander White as such administrator, to wit, of the cost value of over two hundred thousand dollars, of which sum the said Alexander White appropriated for his own use and did use more than the sum of one hundred and twenty-nine thousand dollars, of which sum these defendants, together with Annie C. White and James B. White, were entitled to four-sixths thereof as heirs of Alexander White, deceased, less the dower of Ann White, our mother and widow of Alexander White, deceased, being the sum of fifty-six thousand eight hundred and fifty-nine $\frac{20}{100}$ ($56,859.20;) and, further, that upon an accounting with us on the 16th day of July, A. D. 1879, that sum was found to be due us, together with Annie C. White and James B. White, by said Alexander White, and

60 in order to pay the same & in satisfaction of said indebtedness the said Alexander White made and delivered to us and to Annie C. White and James B. White his warranty deed for the real property above described and referred to in said creditors' bill; that said conveyance was a real and *bona fide* conveyance and made to pay and satisfy a real and *bona fide* indebtedness of fifty-six thousand and eight hundred and fifty-nine $\frac{20}{100}$ dollars ($56,859.20), which sum said Alexander White owed to us, the said defendants, together with Annie C. White and James B. White.

These defendants, Elsie White and Mary S. White, deny that said complainant should have the relief sought, for the reason that Alexander White owed them the money, as above stated, and that the said conveyance was made to satisfy his indebtedness, and that the sale was a *bona fide* one and for a fair, real, and valuable consideration to pay a *bona fide* and real indebtedness.

These defendants neither admit or deny that Alexander White was engaged in mercantile business, they having no knowl-

61 edge on the subject, but verily believe that he was not so engaged.

These defendants had or have no knowledge as to any debts, securities, or stocks due or owing to Alexander White, nor of any property (real or personal) held or owned by him, nor of any beneficial interest therein, nor of any profits thereof, nor of any money, in coin or bank bills, nor of any deposits in any bank or elsewhere to his credit or held by some other person in trust or otherwise for his benefit.

These defendants well know, however, that said Alexander White was indebted to his mother, Ann White, in a large amount, and that he still owes her all that large amount, for which she has taken judgment.

These defendants, further answering, say that they have fully stated all the circumstances within their knowledge as to when the indebtedness to them by Alexander White accrued, which was that the money went into his hands as administrator, and that

62 he, for his own uses and purposes, spent the same, and, being

unable to repay them otherwise, conveyed said real property to them in satisfaction of the indebtedness, and that they paid a good and valuable consideration for the said land described in said deed to them.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

ELSIE WHITE.
63 MARY S. WHITE.

JOSEPH N. & F. W. BARKER,
Sol'rs for said Defendants.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

On this 21st day of November, A. D. 1881, before me personally appeared Elsie White and Mary S. White and made oath that they have heard read the above answer subscribed by them and know the contents thereof, and that the same is true of their own knowledge, except as to matters therein stated to be to their information and belief, and as to those matters they believe them to be true.

[L. S.] SPENCER C. DOTY,
Notary Public, N. Y. Co.

64 And afterwards, to wit, on the 23d day of December, in the year last aforesaid, to wit, A. D. 1881, there were filed in the office of the clerk of said court a certain notice, petition, and bond, which are in words and figures following, to wit:

STATE OF ILLINOIS, }
Cook County, } *ss:*

In the Superior Court of Cook County, of the — Term, A. D. 18—.

FREDERICK W. COTZHAUSEN *v.* ALEXANDER WHITE *et al.*

To J. N. & F. W. Barker, sol's for said def't-:

Please take notice that on Friday, the 23d day of December, A. D. 1881, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, before his honor Judge Gardner, I shall move the court upon petition, a copy of which is hereunto served, to enter an order

removing said cause to the circuit court of the United States for the northern district of Illinois.

65 A. B. BALDWIN,
Sol'r for Compl't.

CHICAGO, *Dec.* 22, *A. D.* 1881.

I hereby acknowledge service of the above notice and petition this 22nd day of Dec., A. D. 1881.

J. N. & F. W. BARKER,
Sol's for Def'ts.

Petition for Removal to the Circuit Court of the United States for the Northern District of Illinois.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

In the Superior Court of Cook County. In Chancery.

FREDERICK W. COTZHAUSEN, Complainant,

vs.

ALEXANDER WHITE, ELSIE WHITE, MARY S. WHITE, ANNIE C. WHITE, JAMES B. WHITE, and MARGARET WHITE, Defendants.

To the said superior court:

The petition of Frederick W. Cotzhausen, complainant in the above cause, respectfully shows to this honorable court that the
66 matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum and value of five hundred dollars.

That the controversy in said suit is between citizens of different States, and that your petitioner was at the time of the commencement of this suit and still is a citizen of the State of Wisconsin, and that Alexander White, Elsie White, Mary S. White, Annie C. White, James B. White, and Margaret White, defendants in said cause, each was then and still is a citizen of the State of Illinois.

And your petitioner offers herewith a bond, with good and sufficient security, for his entering in said circuit court of the United States, on the first day of its next session, a copy of the record in this suit and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully removed thereto.

And he prays this honorable court to proceed no further herein except to make the order of removal required by law and
67 to accept the said surety and bond and to cause the record herein to be removed into said circuit court of the United States in and for the northern district of Illinois.

And your petitioner will ever pray, &c.

FRED. W. COTZHAUSEN.

STATE OF WISCONSIN, } ss:
Milwaukee County, }

I, Frederick W. Cotzhausen, being duly sworn, do say that I am the petitioner in the above-entitled cause; that I have read the foregoing petition and know the contents thereof; that the statements and allegations therein contained are true, as I verily believe.

FRED. W. COTZHAUSEN.

Subscribed by the said Frederick W. Cotzhausen in my presence and by him sworn to before me this 7th day of December, A. D. 1881.

[SEAL.] GEO. L. JONES,
Notary Public, Mil. Co., Wis.

STATE OF WISCONSIN, } ss:
County of Milwaukee, }

OFFICE OF CLERK OF CIRCUIT COURT.

68 I, Julius Wechselberg, clerk of the circuit court of the county of Milwaukee, in the State of Wisconsin, the said court being a court of record and having a seal, do hereby certify that Geo. L. Jones, Esquire, whose name appears subscribed to the annexed instrument, was at the date thereof a notary public within and for said State, residing in said county, duly appointed and qualified and empowered by the laws of said State to administer oaths, take depositions and acknowledgements of deeds, and perform such other duties as by the law of nations or according to commercial usage may be performed by notaries public, and that to his acts and attestations as such full faith and credit is and ought to be given in court and out. I further certify that I verily believe said signature purporting to be his is genuine; that the seal thereto attached is a correct impression of his official seal, and that said instrument is executed and acknowledged according to the laws of said State.

69 In witness whereof I have hereunto set my hand and affixed the seal of said court, at Milwaukee, in said county and State, on this sixth day of December, A. D. one thousand eight hundred and eighty-one.

[SEAL.] JULIUS WECHSELBERG,
Clerk of Circuit Court as Aforesaid.

Bond.

Know all men by these presents that we, Frederick W. Cotzhausen, as principal, and Peter Smith, as surety, are held and firmly bound unto Alexander White, Elsie White, Mary S. White, Annie C. White, James B. White, and Margaret White in the penal sum of two hundred and fifty dollars; the payment whereof, well and truly to be made unto the said Alexander White, Elsie White, Mary S. White, Annie C. White, James B. White, and Margaret White,

their heirs and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents—

Yet upon these conditions: The said Frederick W. Cotzhausen having petitioned the superior court of Cook county, State of
70 Illinois, for the removal of a certain cause therein pending, wherein Frederick W. Cotzhausen is complainant and Alexander White, Elsie White, Mary S. White, Annie C. White, James B. White, and Margaret White are defendants, to the United States circuit court for the northern district of Illinois:

Now, if the said Frederick W. Cotzhausen, your petitioner, shall enter in the said circuit court of the United States, on the first day of its next session, a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full force and virtue.

Witness our hands and seals this 7th day of December, A. D. 1881.

FRED. W. COTZHAUSEN. [SEAL.]
PETER SMITH. [SEAL.]

STATE OF ILLINOIS, } ss:
Cook County, }

71 I, Peter Smith, of said county, the surety named in the foregoing bond, being duly sworn, do depose and say that I am a resident of the State of Illinois and a property-holder therein; that I am worth the sum of five hundred dollars over and above all my debts and liabilities and exclusive of property by law exempt from execution; that I have property in the State of Illinois liable to execution of the value of more than five hundred dollars.

PETER SMITH.

Subscribed and sworn to before me this 23d day of December, A. D. 1881.

JNO. J. HEALEY, *Clerk.*

And afterwards, to wit, on the 23d day of December, in the year last aforesaid, to wit, A. D. 1881, the same being one of the days of the December term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

FREDERICK W. COTZHAUSEN

v.

72 ALEXANDER WHITE, MARGARET WHITE, ELSIE WHITE, MARY E. WHITE, ANNIE C. WHITE, and JAMES B. WHITE.

Bill.

On petition of the complainant it is ordered that this cause be, and is hereby, transferred to the circuit court of the United States in and for the northern district of Illinois, and that the clerk of this court forthwith transmit to said circuit court of the United States a

transcript of all papers and pleadings filed in this cause and of all orders made and entered of record herein.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, John J. Healy, clerk of the superior court of Cook county, in and for the State of Illinois, do hereby certify the above and foregoing to be a true, perfect, and complete transcript of the record in a certain cause lately pending in said court, on the chancery side thereof, wherein F. W. Cotzhausen was complainant and Alexander White *et al.* were defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 28th day of December, A.
73 D. 1881.

[SEAL.] JNO. J. HEALY, *Clerk.*

(Endorsed:) Filed Dec. 28, 1881. W. H. Bradley, clerk.

74 Afterwards, to wit, on the ninth day of March, in the adjourned March term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

FREDERICK W. COTZHAUSEN }
vs. } In Chancery.
ALEXANDER WHITE *et al.* }

And now, at this day, come the parties, by their counsel, and, on motion of the plaintiff, leave is given him to file an amended bill in this case making Ann White a party defendant, and the amended bill is now filed in court.

75 On the same day, to wit, on the ninth day of March, 1882, came the complainant, by his solicitor, and filed in said clerk's office his bill in said entitled cause; which said bill is in the words and figures following, to wit:

To the judges of the circuit court of the United States for the northern district of Illinois, in equity:

Frederick W. Cotzhausen, of the city of Milwaukee, and a citizen of the State of Wisconsin, brings this his bill against Alexander White, Margaret White, Elsie White, Mary S. White, Annie C. White, James B. White, and Ann White, of the city of Chicago, and citizens of the State of Illinois, and thereupon your orator complains and says that heretofore, to wit, on the eleventh day of January, and in the year of our Lord one thousand eight hundred and eighty-one, in the superior court of Cook county, in the State of Illinois, by the consideration and judgment of the said court, your orator recov-

ered against the said defendant, Alexander White, the sum of
76 seven thousand two hundred and eleven dollars and eighty cents, for the damages which he had sustained, as well by occasion of the non-performance of certain promises and undertakings as for the costs and charges of your orator by him about his said suit in that behalf expended, which were adjudged to your orator in and by the said court, whereof the said Alexander White stands convicted, as by the record of the said judgment in the office of the clerk of said court, reference being thereunto had, and to which, for greater certainty, your orator prays leave to refer, will more fully and at large appear.

And your orator further shows unto your honors that the said judgment so recovered in manner aforesaid remaining in full force and effect, and the costs and damages aforesaid remaining unpaid and unsatisfied, your orator, on or about the twelfth day of January, in the year of our Lord one thousand eight hundred and eighty-one, for the purpose of obtaining satisfaction of the said judgment, sued and prosecuted out of the said court a writ called a *fieri facias*,
77 directed to the sheriff of said Cook county, that being the county in which said defendant resided at the time of issuing said writ, by which said writ the said sheriff was commanded that of the goods, chattels, lands, and tenements of the defendant, Alexander White, in his county he caused to be made the aforesaid damages and costs which your orator recovered in said superior court against the said defendant, Alexander White, aforesaid, and that he should have the money at the clerk's office of said court in Chicago, in the said county, within ninety days from the date thereof, to satisfy the judgment so recovered by your orator as aforesaid, and that he should have then and there that writ.

And your orator further shows unto your honors that the said writ of *fieri facias*, before the delivery thereof to the said sheriff of the said Cook county, was duly endorsed, and was afterwards and on or about the first day of February, in the year of our Lord
78 one thousand eight hundred and eighty-one, delivered to the said sheriff to be executed in due form of law.

And your orator further shows unto your honors that the said sheriff of said county, on the twelfth day of April, in the year of our Lord one thousand eight hundred and eighty-one, returned on the said writ to him in that behalf directed and delivered as aforesaid that—

The within-named defendants not found in my county, and no property being found in my county on which to levy I therefore return this writ no property found and no part satisfied.

ORRIN L. MANN, *Sheriff*,
By EMIL DIETZSCH, *Deputy*.

As by the said writ of *fieri facias* and the directions and the return of the said sheriff endorsed thereon as aforesaid, filed in the office of the clerk of the said superior court of Cook county on the said day and year last mentioned, will more fully appear, and to which or to a copy thereof your orator prays leave to refer.

And your orator further shows unto your honors that, as he
79 has been informed and believes to be true, the said judgment still remains in full force and effect, not reversed or satisfied or otherwise vacated, and the said Alexander White has not paid the same to your orator, but has hitherto wholly neglected and refused to do so.

And your orator further shows unto your honors that there is now actually and equitably due to your orator upon the aforesaid judgment the sum of seven thousand two hundred and eleven dollars and eighty cents, together with the interest thereon from the eleventh day of January, one thousand eight hundred and eighty-one, over and above all just claims of the said Alexander White, by way of offset or otherwise.

And your orator further shows unto your honors that he has reason to believe and does believe that the said Alexander White has equitable interests, things in action, or other property of the value of upwards of eight hundred dollars, exclusive of all prior just claims thereon, which your orator has not been able to discover and reach by execution on the said judgment.

80 And your orator further shows unto your honors that, as he has been informed and believes to be true, the said Alexander White has a considerable amount of notes, due bills, bonds, mortgages, judgments, contracts, accounts, money, and of legal and equitable debts, claims, and demands due to him from different persons (whose names are unknown to your orator), and that he has goods, chattels, lands and tenements, leasehold interests, equitable interests in real estate, contracts in relation to real estate, money, and other personal property, either in possession or held in trust for him,
81 the situation, value, and particulars of which are unknown to your orator; and your orator is fearful the said Alexander White will make way with or place the same beyond the control of this court or a court of law unles- restrained from so doing by an injunction from this court.

And your orator further shows unto your honors that on or about the first day of February, A. D. 1878, the defendant, Alexander White, was the owner in fee of the following-described real estate situate in the county of Cook, State of Illinois, viz: Sublot two (2) of lot four (4), block thirty-three (33), in the original town of Chicago; lots one (1) and two (2) of sublot five of lot four (4), in block thirty-three (33), original town of Chicago; the south seventeen (17) feet of lot twenty-seven (27); lots thirty (30), thirty-one (31), thirty-four (34), thirty-five (35), thirty-eight (38), thirty-nine (39), forty-two (42), and forty-three (43), in blocks forty-six (46), forty-seven (47), and fifty-eight (58), in the canal trustees' subdivision of the west half section twenty-seven (27), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian; also the
82 north ten (10) acres of the south twenty (20) acres of the southeast quarter of the northeast quarter of section seventeen (17), township thirty-eight (38) north, range fourteen (14) east, of the third principal meridian; also lots three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), and eleven (11), in H.

M. Thompson's subdivision of lots twenty (20), twenty-one (21), twenty-two (22), and twenty-three (23), in block twenty-four (24), Elston's addition to Chicago; also lots fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty (20), in block fourteen (14); lots eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), and thirty-one (31), in block fifteen (15); lots twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), and forty-five (45), in block sixteen (16), in Adam Smith's subdivision in the south half of the north half of southwest quarter, and the southwest quarter of section thirty-six (36), township thirty-nine (39) north, of range thirteen (13); also lots forty-nine (49), fifty (50), fifty-one (51), fifty-two (52), fifty-three (53), and the east eighteen (18)
83 feet of lot fifty-four (54), in block sixty-one (61), in the canal trustees' subdivision of section seven (7), township thirty-nine (39) north, of range fourteen (14) east, of the third principal meridian.

17. Your orator further shows unto your honors that prior to the rendition of the above judgment, but after the indebtedness upon which the same was rendered had accrued, viz., on or about the 16th day of July, A. D. 1879, the said defendant, Alexander White, made two pretended conveyances in fee, by one of which he pretended to convey in fee to the defendant-, Elsie White, Mary S. White, Annie C. White, and James B. White, the tracts and parts of the real estate hereinabove described, which are situate in the original town of Chicago and in the canal trustees' subdivision of the west half of section twenty-seven (27), township thirty-nine (39) north, of range fourteen (14) east, of the third principal meridian, for a pretended consideration of fifty-six thousand eight hundred and fifty-nine and $\frac{20}{100}$ dollars ($56,859.20), and by the other of said pretended conveyances he pretended to convey to Margaret White
84 all the remainder of the real estate hereinbefore described for a pretended consideration of fourteen thousand two hundred and fourteen $\frac{80}{100}$ dollars ($14,214.80).

And your orator further shows that, a few days later, Alexander White, the above-named defendant, executed his promissory note, dated July 21st, 1879, payable one day after date, with warrant of attorney to confess judgment thereto annexed, wherein and whereby, for value received, he promised to pay to his mother, the defendant, Ann White, the sum of forty-three thousand two hundred and fifty-six $\frac{56}{100}$ dollars ($43,256.56); that, as your orator has been informed and verily believes, the said defendant, Alexander White, also assigned and conveyed unto said Ann White at the time of executing said judgment note, and as collateral security thereto, a large amount of personal and real estate, the particular amount, nature, and value whereof are, however, to this orator as yet unknown; that on or about the 4th day of September, A. D. 1879, in the circuit court of Cook county, in the State of Illinois, a judgment was entered up against the said defendant, Alexander White, and in
85 favor of said Ann White, on the note and warrant of attorney aforesaid, for the sum of forty-three thousand eight hun-

dred and seven $\frac{50}{100}$ dollars ($43,807.50), which said judgment now stands of record in said court, unreversed and apparently a lien on all real estate or interests in real estate which said Alexander White then had or may have since acquired within the county of Cook.

And your orator further shows unto your honors that neither of the aforesaid pretended conveyances were real or *bona fide*, but were all of them colorably and sham, made with the intent and for the purpose of hindering, delaying, and defrauding your orator in the assertion of his legal rights and preventing him from enforcing the collection of his just demand; that all and singular said transfers and conveyances were made by said Alexander White and received by said several grantees therein for the purpose of placing the said real and personal property beyond the reach of your orator;
86 that neither the said Margaret White nor the said Elsie, Mary S., Annie C., James B., and Ann White, either or any of them, gave any consideration for the said pretended conveyances to them, respectively, made, and that the said real estate and personal property is now held by the said Margaret White, Elsie White, Mary S. White, Annie C. White, James B. White, and Ann White in trust for him, the said Alexander White, and for his use and benefit and for the purpose of preventing a sale of the same under and by virtue of the aforesaid execution.

That the judgment note executed by said Alexander White as above particularly stated was fraudulently given and received, and the judgment thereupon entered as aforesaid was fraudulently confessed by the said Alexander White to Ann White and for the purpose on the part of both parties of covering up said Alexander White's property and defrauding your orator in the collection of his demands; that said defendant, Alexander White, was not
87 then and is not now in fact indebted as thereby pretended; that said note and obligation was without any *bona fide* consideration, solely made and incurred with the intention of transferring the ostensible ownership and possession of certain property belonging to the judgment debtor and liable to execution to the said Ann White so as to prevent your orator or any other creditor from levying upon and selling any part thereof, and with a view of having and procuring a first lien upon the real estate hereinbefore described in case the aforesaid conveyances to the sisters and brother of said Alexander White should for any reason fail to prove an effectual protection.

And your orator further shows that he is informed the said defendants will claim and insist that upon an accounting had at or about the time of the various conveyances above referred to, and of the execution of said judgment note, the defendant, Alexander White, who was the administrator of the estate of his deceased father, was found to be indebted to his codefendants, his sisters, brother, and mother, respectively, by reason of property, real
88 and personal, that is said to have come to his hands and possession as such administrator prior to said date belonging to said estate, and that said transfers and other obligations were made in satisfaction of such indebtedness to them respectively found

to be due and owing; but your orator avers and alleges in that behalf that for a number of years prior to the 1st day of February, A. D. 1878, Alexander White acted as administrator of the estate of his deceased father, and by the consent of his mother, brother, and sisters (all of whom continued to live together and constitute but one family and household) the estate was left undivided, and he, said Alexander White, was permitted to manage and conduct the whole of said property so left by his father for the joint benefit of himself and the other parties therein interested as aforesaid, using, investing, and reinvesting the proceeds, rents, issues, and profits thereof as his best judgment might direct, being the agent and representative of
89 the family in all matters and things thereto appertaining; that towards the first day of February, A. D. 1878, with a view of securing a good and permanent tenant for a certain building known as No. 83–87, Fifth avenue, city of Chicago, in which the said estate and defendants were interested, and which then yielded but very little income and revenue, as well as for the purpose of obtaining a good business opening for the above-named defendant, James B. White, his younger brother, with the consent and concurrence of his codefendants herein, he, the said Alexander White, as the agent and representative of the family, and while acting as administrator of the estate as aforesaid, incurred the indebtedness or ground whereof the judgment herein was recovered and governed in negotiating with this orator, that such contracts and obligations were concluded by him for the benefit of such estate and that he was duly authorized by his codefendants in that behalf.

90 That your orator, believing said Alexander White to be authorized so to act on behalf of himself and codefendants, and having confidence in the statements so made and relying thereupon, parted with valuable interests on the faith thereof, to wit, with personal property amounting upwards of twenty-five thousand dollars, taking and receiving in payment thereof (amongst others) obligations of said Alexander White, defendant herein, on ground whereof this judgment was recovered; that within a short time thereafter the defendant, James B. White, well informed of said premises, availed himself of the benefits and advantages by said contract offered and obtained and personally participated therein, and that, as your orator has been informed and believes, the other defendants subsequently ratified the contract as made for their benefit and confirmed all acts and doings of said Alexander White in that behalf.

That, having had the control and management of said estate in manner aforesaid for a number of years and having acted as
91 the agent and representative of the family in that behalf, it was found and ascertained towards the year 1879 that by unforeseen occurrences and miscalculations heavy losses were likely to ensue to the estate unless the payment of obligations incurred by said Alexander White in and about the business and management of said estate and trust fund could be settled upon him personally and the estate freed from all liability on account thereof, and, as your orator has been informed and verily believes, towards that end

accountings between said Alexander White and his codefendants were then and there had or pretended to be had whereby and on ground whereof it might be claimed and asserted that he, as administrator, was justly and truly indebted to his sisters, brother, and mother in large amounts, in satisfaction of ch pretended indebtedness he then could properly transfer and vey all and singular the property and estate outstanding in his name and subject to seizure on execution.

92 But, however the fact in this regard as to such accountings and indebtedness may be, your orator insists that by reason of the aforesaid premises the defendants, Margaret White, Elsie White, Mary S. White, Annie C. White, James B. White, and Ann White, in justice and equity ought not to be permitted to assert as against your orator that the indebtedness or ground whereof this judgment was recovered was not contracted by said Alexander White as their agent and representative and for the benefit of their joint estate, or that they were *bona fide* purchasers from said Alexander White for a valuable consideration, or that Alexander White at the time of such pretended accountings was actually indebted to them in manner and form aforesaid ; and, again, Ann White in justice and equity ought to be estopped from asserting that she obtained as against your orator the judgment note in question in good faith and for a valuable consideration, or

93 that Alexander White upon an accounting was actually indebted to her as above asserted, or that she now has a valid and subsisting lien as judgment creditor anterior and prior to the lien and equities of this complainant.

And your orator further shows unto your honors that this bill of complaint is not exhibited by collusion with the said Alexander White or for the purpose of protecting the property and effects of the said Alexander White or any part thereof against the claims of other creditors, but for the sole purpose of compelling payment and satisfaction of the money due upon the aforesaid judgment.

To the end, therefore, that the said defendants —, if they can, show why your orator should not have the relief hereby prayed, and may, according to the best and utmost of their respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectfully required to answer (answer under oath being waived)—that is to say :

94 1. Whether a judgment was not obtained by your orator against said Alexander White at the time and in the manner and for the amount as heretofore stated in this bill of complaint.

2nd. Whether execution was not issued upon said judgment to the sheriff of the county of Cook at the time and in the manner stated in said bill commanding said sheriff to collect and return the same as stated in the bill.

3d. Whether said sheriff did not, on or about the twelfth day of April, eighteen hundred and eighty-one, return said execution, with his return endorsed thereon, as stated in this bill.

4th. Whether there is not justly and equitably due on said judgment the amount above stated in this bill.

5th. What property and effects, real, personal, and mixed, equitable as well as legal, of every description, goods, chattels, money, book accounts, due bills, promissory notes, bonds, mortgages, judgments, contracts, leasehold interests, equitable interests in real estate, contracts in relation to real estate, stocks of any and what incor-
95 porated company or joint stock company, and other choses in action and effects belonging to the said Alexander White, as well at the time of issuing said *fieri facias* as at the time of filing this bill, whether standing in his name or in the name or in the hands of any other person or persons for his use or in trust for him, either express or implied, and what disposition has been made of each of the same, and when and to whom and for what consideration, and how and when such consideration was paid, fully and particularly, and the amount, condition, situation, and value of each of them, the names and places of residence of the debtors, respectively, and the evidence of their indebtedness, and that they may be set forth and state how much is due on each of such demands and which of them are good and collectable and which of them are doubtful and which of them are bad and who has the possession, custody, or control of the said real and personal estate, goods and chattels, book ac-
96 counts, due bills, promissory notes, bonds, mortgages, judgments, and other choses in action and each of them.

6th. Whether the defendant, Alexander White, did not confess judgment and execute the several conveyances hereinbefore particularly referred to, stating all the facts and circumstances relating thereto, the amount of money actually paid thereon and in what manner the payments were made or were to be made, from whom the funds to make such purchases were derived, and the purpose of said pretended conveyances and judgment note aforesaid, and the consideration thereof, fully and in detail.

And that the two conveyances above referred to, viz., the one to Margaret White and the other to Elsie White, Mary S. White, Annie C. White, and James B. White, may be vacated, set aside, and declared null and void as to your orator, and that the real estate hereinabove described may be declared subject to the
97 said judgment of your orator, and so to pay and satisfy the same, and that the said judgment entered in favor of the defendant, Ann White, as aforesaid, be set aside and declared void as to your orator, and all collaterals and securities obtained or held by reason thereof be released and delivered up to be applied in satisfaction of your orator's claim.

And that a receiver of the money, property, and things in action of the said Alexander White, with the usual powers and authority, may be appointed by this honorable court, and that the said Alexander White may be directed to assign, transfer, and deliver to the said receiver upon oath, under the direction of a master of this court, all his property, equitable interest, things in action, money and effects, and all the books and papers relating thereto, and the evidences thereof, and that your orator may have satisfaction of the

sum due to him on the said judgment, together with the costs and charges in this behalf out of the said money, property, equitable
98 interests, and things in action of the said Alexander White, and that the said Alexander White and his attorneys, counsellors, solicitors, agents, & servants may be enjoined from collecting, receiving, selling, transferring, assigning, delivering, or in any way or manner using, controlling, encumbering, or disposing of any debts or demands due to him, or any real or personal estate, goods, wares, merchandizes, account books, bills, checks, promessory notes, bonds, mortgages, judgments, or other securities, things in action, property, or effects, whether in his own name or hands or in the names or hands of or held by any other person or persons for his use or benefit, or in trust for his express or implied —, except where such trust has been created by or the fund held in trust has proceeded from some other person other than the said Alexander White, until the further order of this honorable court.

And that the defendants, Margaret White, Elsie White, Mary S. White, Annie C. White, James B. White, and Ann White, may be enjoined and restrained from conveying, encumbering, or in
99 any way disposing of the above-described real estate embraced in said pretended conveyances or of any part thereof or interest therein.

And that the said Alexander White may be decreed to pay your orator his costs and charges in this behalf most wrongfully sustained, or that your orator may have such other or further relief in the premises or both as to your honor shall seem meet and shall be agreeable to equity and good conscience.

May it please your honor to grant unto your orator a writ of injunction, to be issued out of and under the seal of this honorable court, directed to the said Alexander White, Margaret White, Elsie White, Mary S. White, Annie C. White, James B. White, and Ann White, and their attorneys, counsellors, solicitors, agents, trustees, and servants, therein and thereby, under a certain penalty in the said writ to be expressed, commanding and enjoining them
100 and each of them in manner as aforesaid until the further order of this honorable court.

May it please your honor to grant unto your orator a writ of subpœna, issued out of and under the seal of this honorable court, directed to the said Alexander White, Margaret White, Elsie White, Mary S. White, Annie C. White, James B. White, and Ann White, commanding them, at a certain day and under a certain penalty therein to be inserted, personally to be and appear before this honorable court, then and there to answer all and singular the premises, and to stand to, abide by, and perform such order and decree therein as to your honor shall seem agreeable to equity and good conscience.

And your orator will ever pray, &c.

FRED. W. COTZHAUSEN,
Complainant.

A. B. BALDWIN,
Sol'r & of Counsel for Compl't.

EASTERN DISTRICT OF WISCONSIN, *ss:*

101 Frederick W. Cotzhausen, being duly sworn, says that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and as to those matters he believes it to be true.

F. W. COTZHAUSEN.

Subscribed and sworn to before me this 6th March, 1882.

[SEAL.] F. BLOODGOOD,
Com'r Circuit Court U. S., E. Dist. Wis.

(Endorsed:) Filed March 9th, 1882. Wm. H. Bradley, clerk.

102 Afterwards, to wit, on the 16th day of May, 1882, came the complainant, by his solicitor, and filed in said clerk's office his replication to the answers of the defendants in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

Circuit Court of the United States, Northern District of Illinois. In Equity.

F. W. COTZHAUSEN, Complainant,

v.

ALEXANDER WHITE, MARGARET WHITE, ELSIE WHITE, MARY S. White, Annie C. White, James B. White, and Ann White, Defendants.

The replication of F. W. Cotzhausen, plaintiff, to the joint and several answer of Elsie White, Mary S. White, Annie C. White, James B. White, and Margaret White, and to the answers of Alexander White and Ann White, defendants.

103 This repliant, saving and reserving to himself, now and all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereto, says that he will aver, maintain, and prove his amended bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of Elsie White, Mary S. White, Annie C. White, and James B. White, Margaret White, Ann White, and Alexander White, defendants, are uncertain, untrue, and insufficient to be replied unto by this repliant; that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as

this honorable court shall direct, and humbly prays as in and by his said bill of complaint he has already prayed.

FREDERICK W. COTZHAUSEN,
Complainant.

104 A. B. BALDWIN,
Sol'r for Complainant.

(Endorsed:) Filed May 16, 1882. Wm. H. Bradley, clerk.

105 On the same day, to wit, on the sixteenth day of May, 1882, there was filed in said clerk's office a stipulation in said entiled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

UNITED STATES OF AMERICA, *State of Illinois:*

Circuit Court of the United States, Northern District of Illinois.

FREDERICK W. COTZHAUSEN *v.* ANN WHITE *et al.*

Bill.

It is hereby stipulated that the answer of Alexander White, Elsie White, James B. White, Margaret White, Mary S. White, Annie C. White, heretofore filed in this cause, may stand of record in this court and be considered the answer to the amended bill, subject to all legal objections and exceptions.

May 15, 1882.

J. N. BARKER,
Sol'r for said Def'ts.
FRED. W. COTZHAUSEN,
In Person.

A. B. BALDWIN,
Sol'r for Compl't.

Filed May 16, 1882.

WM. H. BRADLEY, *Clerk.*

106 Afterwards, to wit, on the tenth day of June, 1882, came Ann White, by her solicitor, and filed in said clerk's office her answer to the bill of complaint in said entitled cause; which said answer is in the words and figures following, to wit:

Answer.

FREDERICK W. COZTHAUSEN
vs.
ALEXANDER WHITE *et als.*
} In Chancery.

The answer of Ann White, one of the defendants, to the bill of complaint of Frederick W. Cotzhausen, complainant.

To the honorable judges of the circuit court of the United States for the northern district of Illinois:

This defendant, now & all times hereafter, saving and reserving unto herself all benefit & advantage of exception which can or may

be had or taken to the many errors, uncertainties, & other imperfections in the said bill contained, for answer thereunto, or to so much thereof as the defendant is advised it is or are material or necessary for her to make answer unto, answering, says that she admits

107 that on the 9th day of April, 1872, her son, Alexander White, was appointed the administrator of the estate of his father, Alexander White, deceased, who left a large amount of money & securities, all of which passed into the hands of her son, Alexander White, as such administrator, to wit, on the cash value of over two hundred thousand dollars, of which sum her son, Alexander White, appropriated for his own use and did use more than the sum of one hundred and twenty-nine thousand dollars, of which sum Ann White, this defendant, as widow of Alexander White, deceased, was entitled to the one-third part thereof, viz., more than the sum of forty-three thousand dollars, as her dower interest in said sum of more than one hundred & twenty-nine thousand dollars.

And this defendant further says that upon an accounting with her, to wit, on the 21st day of July, 1879, the sum of forty-three thousand two hundred & fifty-six $\frac{56}{100}$ dollars ($43,256.56) was found to be due the said Ann White, this defendant, from her son, the said

108 Alexander White, and that on the 21st day of July, 1879, the said Alexander White, being so indebted to the said Ann White, this defendant, in the sum of forty-three thousand two hundred and fifty-six $\frac{56}{100}$ dollars ($43,256.56), made and delivered to her his certain promissory note of that date, with warrant of attorney to confess judgment thereto attached, & thereby promised to pay her the said sum of money one day after the date thereof, with interest thereon at the rate of eight per cent. per annum.

And this defendant further says that, to secure the payment of the principal sum & interest above mentioned, the said Alexander White, her son, assigned, transferred, and set over to Ann White, this defendant, at various times and long prior to the judgment on which this bill is filed, the following-described personal and real properties as collateral security for the above-described judgment note, the proceeds of which were to apply on the said principal sum & interest, to wit:

1. A promissory note, dated June 12, '73, for $4,000, made by R. Fowler (now deceased), payable sixty days after the date

109 thereof, & on which $2,000 remained unpaid when assigned.

2. A promissory note, dated July 6, '75, for $60, made by C. T. Brothers, payable ninety days after the date thereof.

3. A promissory note, dated July 10th, '75, for $150, made by John Taylor, payable on demand.

4. A due bill, dated July 19th, '75, for $200, made by John Reid, payable about thirty days after the date thereof.

5. A promissory note, dated Sept. 4, '75, for $1,727.94, made by John Reid, payable on demand.

6. A promissory note, dated October 1, '75, for $300, made by Alexander Sullivan, payable one year after the date thereof.

7. A promissory note, dated Feb'y 1, '76, for $25, made by W. H. Wilcox, payable on demand.

8. A promissory note, dated M'ch 7, '76, for $75, made by H. G. Howe, payable one day after the date thereof.

9. A promissory note, dated Aug. 8, '76, for $220, made by J. F. Gookins, payable 60 days after the date thereof.

10. A promissory note, dated M'ch 1, '77, for $454.85, made
110 by S. B. Munson, Jr., payable one year after the date thereof.

11. A promissory note, dated M'ch 8, '77, for $125, made by C. E. & M. E. Quinlan, payable four months after the date thereof.

12. A promissory note, dated April 12, '77, for $100, made by C. E. & M. E. Quinlan, payable ten days after the date thereof.

13. A promissory note, dated Sept. 1, '77, for $5,000, made by the Jenison Heating and Ventilating Co., payable one year after the date thereof.

14. A promissory note, dated Sept. 28, '77, for $13.20, made by M. A. Wakefield, payable on demand.

15. A due bill, dated Dec. 7, '77, for $458.73, made by S. B. Munson, Jr.

16. A due bill, dated May 15, '78, for $484.30, made by S. B. Munson, Jr., on which $100 had been paid when assigned.

17. A due bill, dated July 26, '78, for $50, made by the Jenison H. & Ventilating Company.

18. A promissory note, dated Dec. 20, '78, for $1,500, made by S. B. Munson, Jr., payable 30 days after the date thereof.

111 19. A claim against the American Oleograph Company of Wisconsin for about $5,000.

20. Certificate No. 438, dated Dec. 8th, 1879, for $1,419.25, of the receiver of the City National Bank of Chicago, on which about $300 remains unpaid.

21. A claim against one Horace B. Fry.

22. A claim against Kountze Brothers.

23. One hundred & fifty shares of the capital stock of the American Oleograph Company of Wisconsin.

24. Eight hundred and fifty-seven (857) shares of the capital stock of the Jenison Heating an- Ventilating Company of Illinois.

25. Two hundred and twenty-three (223) shares of the capital stock of the Au Sable Quarry Company of Illinois.

26. Mortgage bonds of the par value of $1,800 of the Au Sable Quarry Company of Illinois.

All of which above described & mentioned promissory notes, due bills, claims, stocks, bonds, &c., are either worthless or of little value.

27. Also lot ten (10), in block four (4), in Stone's subdivis-
112 ion of the north fifteen acres of the west $\frac{1}{2}$ of the S. W. $\frac{1}{4}$ of section thirty-four (34), T. 39, range (14), in Cook county, Illinois, which lot said Alexander White conveyed to Ann White, this defendant, by deed dated August 29, '79. This lot was first, however, conveyed to one Wm. S. McMickell to indemnify him for signing a certain bond for Alexander White, and said McMickell thus became liable for the payment of some eleven hundred dollars ($1,100); the said McMickell then conveyed the said lot to one

Thomas W. Phillips, who now holds the legal title thereof as trustee, first to pay the said eleven hundred dollars & then to pay the surplus, if any, to said Ann White, this defendant.

And this defendant further says that on or about the 4th day of September, 1879, in the circuit court of Cook county, in the State of Illinois, judgment was entered up against the said Alexander White in favor of the said Ann White, this defendant, for the sum of forty-three thousand eight hundred and seven & $\frac{50}{100}$ ($43,807.50) dollars, being the amount due on the above-described judgment note, with interest, costs, &c.

113 And this defendant further says that the above-described judgment note, the above-described personal & real properties as collateral security thereto, and the confession of judgment thereon as above described were each and all made, given, delivered, and confessed in good faith & for a real and *bona fide* & valuable consideration & indebtedness of forty-three thousand two hundred and fifty-six $\frac{56}{100}$ ($43,256.56) dollars, which sum her son, Alexander White, owed this defendant, Ann White.

And this defendant further says that she has been informed & believes it to be true that her son, Alexander White, was at one time the owner in fee of the several pieces of real estate as mentioned & described in said bill of complaint, and that on or about the 16th day of July, 1879, he conveyed the same at the time and for the amounts & to the parties, respectively, as in said bill of complaint alleged; and, further, she has been informed and believes it to be true that said conveyances were real and *bona fide* convey-

114 ances and made to pay and satisfy real and *bona fide* indebtedness of the amounts, as stated both in said conveyances and the said bill of complaint.

And this defendant further says she denies that her son, Alexander White, either as administrator of the estate of Alexander White, deceased, or in any other capacity, was ever by her consent permitted or by her knowledge authorized in any way or under any circumstances "to manage and conduct the whole or any part of said estate as left by his father for the joint benefit of himself and the other parties therein interested" or to use, invest, & reinvest the proceeds, rents, issues, and profits of said estate as his best judgment might direct, or to in any way act as "the agent and representative of the family in all matters and things thereto appertaining," all of which above allegations are contained in the complainant's said bill of complaint.

And this defendant further says that if her son, Alexander White, did ever so act as above alleged or did ever represent himself as the agent as above alleged he did so on his own account and on his own responsibility and without the permission, consent, knowledge, or authority of this defendant, Ann White.

And this defendant further says she denies that ever, with her consent or concurrence, "the alleged indebtedness of said

115 Alexander White to said complainant was *ever* incurred or ever as "the agent and representative" of her and her family, as in said bill of complaint alleged; and, further, that if ever her

son, Alexander White, avowed to said complainant, as alleged in said bill of complaint, that certain contracts and obligations were concluded between said complainant and said Alexander White, her son, for the benefit of said estate, and that he was duly authorized so to do, this defendant says it was done without her permission, consent, knowledge, or authority.

And this defendant further says that if said complainant ever parted, as alleged in said bill of complaint, with valuable interests on the faith and strength of such representations it was done at his own peril & risk.

And this defendant further says she denies that she *is* in any way or manner ever subsequently ratified certain alleged contracts between her son, Alexander White, and the said complainant, or that she in any way or manner ever confirmed "all acts and doings of said Alexander White in that behalf;" all of which allegations are contained in said bill of complaint.

This defendant further says she has no knowledge—

116 1st. That a judgment was obtained by said complainant against said Alexander White at the time and in the manner and for the amount as stated in said bill of complaint.

2nd. That execution was issued on said judgment to the sheriff of the county of Cook, as stated in his bill of complaint.

3d. That said sheriff did return said execution, as stated in his bill of complaint.

4th. That there is justly and equitably due on said judgment the amount as stated in his bill of complaint.

This defendant further says that she has fully and in detail stated all the facts and circumstances within her knowledge as to how the indebtedness whereby her son, Alexander White, accrued, which was that the money went into his hands as administrator, and that he, for his own uses and purposes, spent and used the same, and being unable to repay her otherwise, made and delivered to her the the said above-described judgment note, together with the above-described personal and real properties, as collateral security thereto, and that the same were given in good faith and for a real, *bona fide*, and valuable consideration and indebtedness of forty-three thousand two hundred and fifty-six $\frac{56}{100}$ dollars ($43,256.56), which
117 sum Alexander White owed to said Ann White, this defendant.

And this defendant, Ann White, denies all and all manner of unlawful combination and confederacy wherewith she is by said creditors' bill charged, without this, that there is any other matter, cause, or thing in the complainant's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct,

and prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

ANN WHITE.

JOSEPH N. BARKER,
Sol'r for Defendant.

118 STATE OF ILLINOIS, }
County of Cook, } *ss:*

On this fourth day of May, A. D. 1882, before me personally appeared Ann White and made oath that she has heard read the above answer subscribed by her and knows the contents thereof, and that the same is true of her own knowledge, except as to matters therein stated to be on her information and belief, and as to those matters she believes them to be true.

[SEAL.] JOHN N. BARKER,
Notary Public.

(Endorsed:) Filed June 10th, 1882. W. H. Bradley, clerk.

119 Afterwards, to wit, on the first day of August, in the July term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

FREDERICK W. COTZHAUSEN }
vs. } In Chancery.
ALEXANDER WHITE *et al.* }

On motion of complainant's solicitor, no objections being made, it is ordered that the time for taking the complainant's testimony is hereby extended to the twentieth day of October next.

Afterwards, to wit, on the eleventh day of October, in the adjourned October term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

FREDERICK W. COTZHAUSEN }
vs. } In Chancery.
ALEXANDER WHITE *et al.* }

On motion, the time for the complainant to take proofs herein is hereby extended to the twentieth day of December, A. D. 1882.

120 Afterwards, to wit, on the first day of November, in the adjourned October term of said court, 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

FREDERICK W. COTZHAUSEN *vs.* ALEXANDER WHITE *et al.* } In Chancery.

On motion, the complainant is ruled to close his proofs herein by the first day of December next.

121 NORTHERN DISTRICT OF ILLINOIS, *ss:*

FREDERICK W. COTZHAUSEN *vs.* ALEXANDER WHITE *et al.* } In Chancery. No. 17974.

Be it remembered that on the fifteenth day of July, 1882, came the complainant, by his solicitor, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his bond for costs, and also at the same time filed his creditors' bill in said entitled cause; which said bond and creditors' bill are respectively in the words and figures following, to wit:

122 *Bond for Cost-.*

UNITED STATES OF AMERICA, *Northern District of Illinois:*

In the Circuit Court of said District. July Term, A. D. 1882.

FREDERICK W. COTZHAUSEN *vs.* ALEXANDER WHITE *et al.*

I enter myself security for cost- in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the complainant of any costs ordered or adjudged to be paid by him I hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated this 15th day of July, A. D. 1882.

A. B. BALDWIN.

Endorsed: Filed July 15th, A. D. 1882. W. H. Bradley, clerk.

123 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States for the Northern District of Illinois. In Equity.

To the judges of said court, in chancery sitting:

Your orator, Frederick W. Cotzhausen, of the city of Milwaukee and a citizen of the State of Wisconsin, brings this his bill against Alexander White, Margaret White, Elsie White, Mary S. White, Annie C. White, James B. White, and Ann White, of the city of Chicago and citizens of the State of Illinois; and thereupon your orator complains and respectfully represents unto your honors that at the March term, A. D. 1882, of the superior court of Cook county, State of Illinois, to wit, on the ninth day of March, 1882, the same being one of the regular days of said term, your orator recovered a judgment against Alexander White and S. B. Munson, Jr., the said Alexander White being one of the defendants hereinafter
124 named, for the sum of seven thousand fifty-four (7,054) dollars and thirty-four (34) cents for the damages which he had sustained and the costs of suit and charges of your orator by him about said suit in that behalf expended, which were adjudged to your orator in and by the said court whereof the said Alexander White and S. B. Munson, Jr., stand convicted, as by the record of the said judgment in the office of the clerk of said court, reference being thereto had, and to which for greater certainty your orator prays leave to refer, will more fully and at large appear.

And your orator further represents unto your honor- that the said judgment so recovered in manner aforesaid remaining in full force and effect and the damages aforesaid unpaid and unsatisfied, your orator, on or about the eighteenth day of March, in the year of our Lord one thousand eight hundred and eighty-two, for the purpose of obtaining satisfaction of the said judgment, sued and prosecuted out of the said court a writ of *fieri facias* directed to the sheriff of Cook county, that being the county in which said defendants resided
125 at the time of the issuing of said writ, by which said writ the said sheriff was commanded that of the goods, chattels, lands, and tenements of the defendants, Alexander White and S. B. Munson, Jr., in his county he cause to be made the sum of seven thousand and fifty-four (7,054) dollars and thirty-four (34) cents, which your orator in said superior court recovered against the said defendants, Alexander White and S. B. Munson, Jr., and that he should have the money at the clerk's office of said court, at Chicago, in said county, in ninety days from the date thereof, to satisfy the judgment so recovered by your orator as aforesaid, and that he should have then and there that writ.

And your orator further shows that the said writ of *fieri facias*, before the delivery thereof to the said sheriff, was duly endorsed, and was afterward and on or about the 21st day of March, in the year of our Lord one thousand eight hundred and eighty-two, delivered to the said sheriff to be executed in due form of law.

And your orator further shows that the said sheriff of said
126 county aforesaid, on the twenty-first day of April, in the year of our Lord one thousand eight hundred and eighty-two, returned on the said writ to him in that behalf directed and delivered as aforesaid that "I have demanded of the within-named defendants, Alexander White and S. B. Munson, Jr., that they pay this execution or that they surrender of their estate, goods and chattels, lands and tenements (not exempt from execution), to be levied upon to satisfy the same, which they failed and refused to do; and, being unable to find any of their property in my county upon which to levy this writ, I return the same, no property found and no part satisfied, this 21st day of April, 1882, and writ returned by order of plaintiff's attorney, herein enclosed"—O. L. Mann, sheriff, by Chas. H. Kelsey, dep.—

As by the said writ of *fieri facias* and the directions and the return of the said sheriff endorsed thereon, as aforesaid, now on file in the office of the clerk of the said court, will more fully appear, and to which or to a copy thereof your orator prays leave to refer.

And your orator further shows that the said judgment still
127 remains in full force and effect, not reversed or satisfied or otherwise vacated, and that the said Alexander White and S. B. Munson, Jr., have not, nor have either of them, or any one for them, paid the same to your orator, but have hitherto wholly neglected and refused so to do.

And your orator further shows that there is now actually and equitably due to your orator upon the aforesaid judgment the sum of seven thousand fifty-four (7,054) dollars and thirty-four (34) cents, together with costs of suit, and the interest thereon from the ninth day of March, one thousand eight hundred and eighty-two, over and above all claims of said defendants, by the way of set-off or otherwise.

And your orator well hoped that the said defendant, Alexander White, or said S. B. Munson, Jr., would have paid to your orator the amount due him on said judgment, or would have applied for that purpose any property, money, debts, or other equitable interests or things in action belonging to them, or in which they are in any way interested, as in equity and good conscience they ought to have done.

128 And your orator further shows unto your honors that on or about the first day of February, A. D. 1878, the defendant, Alexander White, was the owner in fee of the following-described real estate situate in the county of Cook, State of Illinois, viz: Sublot two (2) of lot four (4) of block thirty-three (33), in the original town of Chicago; lots one (1) and two (2) of sublot five of lot four (4), in block thirty-three (33), original town of Chicago; the south seventeen (17) feet of lot twenty-seven (27); lots thirty (30), thirty-one (31), thirty-four (34), thirty-five (35), thirty-eight (38), thirty-nine (39), forty-two (42), and forty-three (43), in blocks forty-six (46), forty-seven (47), and fifty-eight (58), in the canal trustees' subdivision of the west half, section twenty-seven (27), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian; also the

north ten (10) acres of the south twenty (20) acres of the southeast quarter of the northeast quarter of section seventeen (17), township thirty-eight (38) north, range fourteen (14) east, of the third principal meridian; also lots (3) three, four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), and eleven (11),
129 in H. M. Thompson's subdivision of lots twenty (20), twenty-one (21), twenty-two (22), and twenty-three (23), in block twenty-four (24), Elston's addition to Chicago; also lots fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty (20), in block fourteen (14); lots eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), and thirty-one (31), in block fifteen (15); lots twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), and forty-five (45), in block sixteen (16), in Adam Smith's subdivision, in the south half of north half of southwest quarter, and the southwest quarter of section thirty-six (36), township thirty-nine (39) north, of range thirteen (13); also lots forty-nine (49), fifty (50), fifty-one (51), fifty-two (52), fifty-three (53), and the east eighteen (18) feet of lot fifty-four (54), in block sixty-one (61), in the canal trustees' subdivision of section seven (7), township thirty-nine (39) north, of range fourteen (14) east, of the third principal meridian.

Your orator further shows unto your honors that, prior to
130 the rendition of the above judgment, but after the indebtedness upon which the same was rendered had accrued, viz., on or about the 16th day of July, A. D. 1879, the said defendant, Alexander White, made two pretended conveyances in fee, by one of which he pretended to convey in fee to the defendants, Elsie White, Mary S. White, Annie C. White, and James B. White, the tracts and parts of the real estate hereinabove described, which are situate in the original town of Chicago and in the canal trustees' subdivision of the west half of section twenty-seven (27), township thirty-nine (39) north, of range fourteen (14) east, of the third principal meridian, for a pretended consideration of fifty-six thousand eight hundred and fifty-nine and $\frac{20}{100}$ dollars ($56,859.20), and by the other of said pretended conveyances he pretended to convey to Margaret White all the remainder of the real estate hereinbefore described for a pretended consideration of fourteen thousand two hundred and fourteen $\frac{80}{100}$ dollars ($14,214.80).

And your orator further shows that a few days later Alex-
131 ander White, the above-named defendant, executed his promissory note, dated July 21st, 1879, payable one day after date, with warrant of attorney to confess judgment thereto annexed, wherein and whereby, for value received, he promised to pay to his mother, the defendant, Ann White, the sum of forty-three thousand two hundred and fifty-six $\frac{56}{100}$ dollars ($43,256.56); that, as your orator has been informed and verily believes, the said defendant, Alexander White, also assigned and conveyed unto said Ann White, at the time of executing said judgment note and as collateral security thereto, a large amount of personal and real estate, the particu-

lar amount, nature, and value whereof are, however, to this orator as yet unknown; that on or about the 4th day of September, A. D. 1879, in the circuit court of Cook county, in the State of Illinois, a judgment was entered up against the said defendant, Alexander White, and in favor of said Ann White on the note and warrant of attorney aforesaid for the sum of forty-three thousand eight hundred and seven $\frac{50}{100}$ dollars ($43,807.50), which said judgment now
132 stands of record in said court unreversed and apparently a lien on all real estate or interests in real estate which said Alexander White then had or may have since acquired within the county of Cook.

And your orator further shows unto your honors that neither of the aforesaid pretended conveyances were real or *bona fide*, but were all of them colorably and sham-, made with the intent and for the purpose of hindering, delaying, and defrauding your orator in the assertion of his legal rights and preventing him from enforcing the collection of his just demand; that all and singular said transfers and conveyances were made by said Alexander White and received by said several grantees therein for the purpose of placing the said real and personal property beyond the reach of your orator; that neither the said Margaret White nor the said Elsie, Mary S., Annie C., James B., and Ann White, either or any of them, gave any consideration for the said pretended conveyances to them respectively made, and that the said real estate and personal property is
133 now held by the said Margaret White, Elsie White, Mary S. White, Annie C. White, James B. White, and Ann White in trust for him, the said Alexander White, and for his use and benefit, and for the purpose of preventing a sale of the same under and by virtue of the aforesaid execution.

That the judgment note executed by said Alexander White, as above particularly stated, was fraudulently given and received, and the judgment thereupon entered, as aforesaid, was fraudulently confessed by the said Alexander White to Ann White, and for the purpose, on the part of both parties, of covering up said Alexander White's property and defrauding your orator in the collection of his demands; that said defendant, Alexander White, was not then and is not now, in fact, indebted as thereby pretended; that said note and obligation was without any *bona fide* consideration, solely made and incurred with the intention of transferring the ostensible ownership and possession of certain property belonging to the judgment debtor and liable to execution to the said Ann White, so as
134 to prevent your orator or any other creditor from levying upon and selling any part thereof and with a view of having and procuring a first lien upon the real estate hereinbefore described in case the aforesaid conveyances to the sisters and brother of said Alexander White should for any reason fail to prove an effectual protection.

And your orator further shows that he is informed, and said defendants will claim and insist, that upon an accounting had at or about the time of the various conveyances above referred to and of the execution of said judgment note, the defendant, Alexander

White, who was [redacted]dministrator of the estate of his deceased father, was found to be indebted to his codefendants, his sisters, brother, and mother, respectively, by reason of property, real and personal, that is said to have come to his hands and possession as such administrator prior to said date belonging to said estate, and that said transfers and other obligations were made in satisfac-
135 tion of said indebtedness to them, respectively, found to be due and owing, but your orator avers and alleges in that behalf that for a number of years prior to the first day of February, A. D. 1878, Alexander White acted as administrator of the estate of his deceased father, and by the consent of his mother, brother, and sisters (all of whom continued to live together and constitute but one family and household), the estate was left undivided and he, said Alexander White, was permitted to manage and control the whole of said property so left by his father for the joint benefit of himself and the other parties therein interested as aforesaid, using, investing, and reinvesting the proceeds, rents, issues, and profits thereof as his best judgment might direct, being the agent and representative of the family in all matters and things thereto appertaining; that towards the first day of February, A. D. 1878, with a view of securing a good and permanent tenant for a certain building known as No. 83–87 Fifth ave-
136 nue, city of Chicago, in which the said estate and defendants were interested, and which then yielded but very little income and revenue, as well as for the purpose of obtaining a good business opening for the above-named defendant, James B. White, his younger brother, with the consent and concurrence of his codefendants herein, he, the said Alexander White, as the agent and representative of the family, and while acting as administrator of the estate as aforesaid, incurred the indebtedness on ground whereof the judgment herein was recovered, and avowed in negotiating with this orator that such contracts and obligations were concluded by him for the benefit of such estate, and that he was duly authorized by his codefendants in that behalf.

That your orator, believing said Alexander White to be authorized so to act on behalf of himself and codefendants and having confidence in the statements so made and relying thereupon, parted with valuable interests on the faith thereof, to wit, with personal
137 property amounting — upwards of twenty-five thousand dollars, taking and receiving in payment thereof (amongst others) obligations of said Alexander White, defendant herein, on ground whereof this judgment was recovered; that within a short time thereafter the defendant, James B. White, well informed of said premises, availed himself of the benefits and advantages by said contract offered and obtained and personally participated therein, and that, as your orator has been informed and believes, the other defendants subsequently ratified the contract so made for their benefit and confirmed all acts and doings of said Alexander White in that behalf.

That, having had the control and management of said estate in manner aforesaid for a number of years and having acted as the agent

and representative of the family in that however, was found and ascertained towards the year 1879 that by unfor-seen occurrences and miscalculations heavy losses were likely to ensue to the
138 estate unless the payment of obligations incurred by said Alexander White in and about the business and management of said estate and trust fund could be settled upon him personally and the estate freed from all liability on account thereof; and, as your orator has been informed and verily believes, towards that end accountings between said Alexander White and his codefendants were then and there had or pretended to be had, whereby and on ground whereof it might be claimed and asserted that he, as administrator, was justly and truly indebted to his sisters, brother, and mother in large amounts, in satisfaction of which pretended indebtedness he then could properly transfer and convey all and singular the property and estate outstanding in his name and subject to seizure on execution.

But, however the fact in this regard as to such accountings and indebtedness may be, your orator insists that by reason of the aforesaid premises the defendants, Margaret White, Elsie White, Mary S. White, Annie C. White, James B. White, and Ann
139 White, in justice and equity, ought not to be permitted to assert as against your orator that the indebtedness, on ground whereof this judgment was recovered, was not contracted by said Alexander White, as their agent and representative, and for the benefit of their joint estate; or that they were *bona fide* purchasers from said Alexander White for a valuable consideration; or that Alexander White, at the time of such pretended accountings, was actually indebted to them in manner and form aforesaid; and again, Ann White, in justice and equity, ought to be estopped from asserting that she obtained as against your orator the judgment note in question in good faith and for a valuable consideration; or that Alexander White, upon an accounting, was actually indebted to her, as above asserted; or that she now has a valid and subsisting lien as judgment creditor anterior and prior to the lien and equities of this complainant.

140 But now, so it is, may it please your honors that the said defendants, combining and confederating together and with divers other persons to your orator unknown, but whose names when discovered he pray- may be inserted herein, with proper and apt words to charge them, and contriving how to injure and defraud your orator in the premises, neglect or refuse to pay the amount so due to your orator on his said judgment, or to apply for that purpose any property, money, debts, or other equitable interests or things in action belonging to the said defendant, Alexander White, and for reason whereof the said defendants set up a variety of unfounded pretenses, all of which actings, doings, neglects, and pretenses are contrary to equity and good conscience and tend to the manifest wrong and injury of your orator in the premises.

In tender consideration whereof, and forasmuch as your orator is remediless in the premises by the strict rules of the common
141 law and cannot have adequate relief, save in a court of

equity where matters of this and a similar nature are properly cognizable and relievable:

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, an answer under oath being waived, according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the matters and things hereinbefore stated and charged, and particularly to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are required to answer—that is to say, the said defendants may fully set forth and discover, according to the best of their knowledge, remembrance, information, and belief, the nature and situation, amount and value, of all the property, interest, and effects of the said defendant, Alexander White, including all things in
142 action of whatever nature or kind, with all the particulars relating thereto, and that they may answer and state whether, at the time of filing this your orator's bill of complaint, the said defendant, Alexander White, did not own debts due to him to a considerable amount; and, if so, that they may state particularly the amount of such debts, respectively, and from whom the same are due and what security is held therefor; and also that they may state which and what amount of said debts are good and collectible and what amount, bad or doubtful; and whether at the time of filing this your orator's bill of complaint he had not some property, real or personal, in law or equity, belonging to him or held in trust for him or in which he had some beneficial interest of some kind or description; and, if so, that they may state and set forth a full, true, and particular account thereof and the nature and value of his interest therein, and that they may also state whether he had not money of some kind in his possession or under his control or
143 deposited to his credit or for his use, or in some way or manner held for his use and benefit; and, if so, that he may state and set forth particularly the amount thereof and how and by whom the same is held; and that he may also state whether he has any other equitable interest or thing in action or other means belonging to him or in which he is in any way interested, whereby he could pay any part of the amount so as aforesaid due to your orator upon his said judgment against them, the said defendant-, Alexander White and said S. B. Munson, Jr.

And if the said defendant, Alexander White, last named has made any sale, assignment, or transfer of his property and effects, or any part thereof, that then the said defendants may state and set forth, each for himself, jointly or separately, generally but not in items, what property or effects have been so sold, assigned, or transferred, and the value thereof, and, particularly, when and to whom and for what purpose and upon what terms and conditions such sale,
144 assignment, or transfer was made, and what has been done under such sale, assignment, or transfer, and what has been done with the property or effects so sold, assigned, or transferred, and the avails thereof; and that the said defendants may specially

state or set forth, each for himself, jointly or separately, whether the defendant, Alexander White, did not confess judgment and execute the several conveyances hereinbefore particularly referred to, stating all the facts and circumstances relating thereto, the amount of money actually paid thereon and how and in what manner the payments were made or were to be made, from whom the funds to make such purchases were derived, and the purpose of said pretended conveyances and judgment note aforesaid, and the consideration therefor, fully and in detail.

And that the said defendants or some of them may be decreed to pay your orator the amount so as aforesaid due to him for principal and interest on his said judgment, together with your orator's
145 costs and charges in this behalf sustained, and may be decreed to apply for that purpose any money or property, real or personal, in law or equity, debts, choses in action, or equitable interests belonging to said defendant, Alexander White, or held in trust for him or in which he is in any way or manner beneficially interested; and that the said defendants may be enjoined and restrained from selling, assigning, transferring, delivering, negotiating, discharging, receiving, collecting, incumbering, or in any way or manner disposing of or intermeddling with any debts or demands due to said Alexander White or any bills, bonds, notes, drafts, checks, book accounts, mortgages, judgments, or other debts due to him, whether in his possession or held by some other person in trust for him or to his use or benefit; and also from selling, assigning, transferring, or in any manner incumbering or disposing of or intermeddling with any money in coin, bank bills, drafts, or checks belonging to said defendant, Alexander White, whether
146 in his possession or held by any person in trust for his use or benefit, or any stock or interest in any private or incorporated company or any property, real or personal, things in action, or chattels real, held by him or by any person for him or in which he has any interest whatever, except when such trust has been created by or the fund so held in trust has proceeded from some person other than the said defendant, Alexander White; and that the defendants, Margaret White, Elsie White, Mary S. White, Annie C. White, James B. White, and Ann White, may be enjoined and restrained from conveying, incumbering, or in any way disposing of the above-described real estate embraced in such pretended conveyance or of any part thereof or interest therein.

And your orator further shows unto your honor- that on or about the first day of February and before and after that time, in the year of our Lord one thousand eight hundred and seventy-eight, the said defendant, Alexander White, was engaged in the merchantile
147 business at the city of Chicago, Cook county, Illinois, and that your orator is informed and believes that in the course of the said merchantile business of the said defendant, Alexander White, divers persons became indebted to him to a large amount, and that the said defendant last named, at the time of filing this your orator's bill of complaint, had debts due to him, and for which he holds divers securities and evidences to a large amount, and has divers

goods, wares, and merchandise and other articles of personal property which belong to him or in which he, in some way or manner, is beneficially interested; and that he has equitable interests and things in action of some nature or kind which might and ought to be applied to the payment of your orator's said judgment against him, the said defendant, Alexander White.

And your orator also charges that the said defendant, Alexander White, is owner of or in some way or manner beneficially interested in some real estate in this or some other State, or some chattels real of some name or kind, or some contract or agreement
148 relating to real estate, or the rents, issues, and profits of some real estate; and also that the said defendant, Alexander White, is owner of or in some way beneficially interested in the stock of some companies, incorporated or unincorporated, or in the profits of some company or copartnership; and also that he had in his possession at the time of the filing of this your orator's bill of complaint some money in coin or bank bills or that he has money deposited in some bank or elsewhere to his credit, or that he has money or securities for the payment of money held by some other person, in trust or otherwise, for his benefit.

And if the said defendant, Alexander White, made any sale, assignment, or transfer of his property or effects, or any part thereof, your orator expressly charges that he believes such sale, assignment, or transfer is merely colorable, and made with a view of protecting the property or effects of said defendant, Alexander White, so assigned, and placing the same beyond the reach of your orator's
149 said judgment, and enabling the said defendant, Alexander White, to control and enjoy the same and the avails thereof, or to hinder or delay your orator in the collection of his debt now in judgment as aforesaid; and that so it would appear if the said defendant, Alexander White, would state and set forth when and to whom such sale, transfer, or assignment was made, and what was the amount in value of the property or effects so sold, assigned, or transferred, and what were the terms upon which said sale, transfer, or assignment was made, and what disposition has been made of the property or effects so sold, assigned, or transferred, and in whose possession the same now is or what has deen done with the avails thereof; and your orator claims a full and complete discovery of all such property, effects, and things in actions belonging to the said defendant, Alexander White, and of all trusts whereby any property, debts, or effects are held for the use or benefit of the said defendant last named, and of every sale, assignment, or trans-
150 fer which the said defendant last named has made of his property, debts, or other effects, and of the person or persons to whom such sale, assignment, or transfer has been made, the amount and value of the property, debts, or other effects so sold, assigned, or transferred, and the trusts and other conditions upon which such sale, assignment, or transfer was made, and all the facts and circumstances relating thereto; and particularly what is the situation of the property, debts, or other effects sold, assigned, or transferred at the time of filing this your orator's bill of complaint.

And your orator furthes shows unto your honor- that he has reason to believe, and does believe, that the said defendant last named has property and other equitable interests, things in action, or effects of the value of more than five hundred dollars, exclusive of all prior first claims thereon, and which your orator has been unable to reach by execution on said judgment against the said defendant last named, and that this your orator's bill of complaint is not exhibited by collusion with the said defendant or with any other person, or for the purpose of protecting the property or effects
151 of said defendant, Alexander White, against the claims of other creditors, but for the sole purpose of compelling payment and satisfaction of the judgment so as aforesaid recorded by your orator against the defendant, Alexander White.

And your orator prays that the two conveyances above referred to, viz., the one to Margaret White and the other to Elsie White, Mary S. White, Annie C. White, and James B. White, may be vacated, set aside, and declared null and void as to your orator, and that the real estate hereinabove described may be declared subject to the said judgment of your orator, and so to pay and satisfy the same.

And that the said judgment entered in favor of the defendant, Ann White, as aforesaid be set aside and declared void as to your orator, and all collaterals and securities obtained or held by reason thereof be released and delivered up to be applied in satisfaction of your orator's claim.

And that the said defendant, Alexander White, last named, may also be in like manner prohibited from making any assign-
152 ment of his property and from confessing any judgment for the purpose of giving preference to any other creditor over your orator, and from doing any other act to enable other creditors to obtain his property, and that a receiver may be appointed, according to the course of practice in this court and with the usual powers of receivers in like cases, of all the property, equitable interests, things in action, and effects of the said defendant, Alexander White.

And that your orator may have such further or such other relief in the premises as the nature of his case shall require, and as shall be agreeable to equity and good conscience.

May it please your honor- to grant unto your orator the people's writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said defendants, Alexander White, Margaret White, Elsie White, Mary S. White, Annie C. White, James B. White, and Ann White, and to their counselors, attorneys, solicitors, trustees, and agents therein and thereto, command-
153 ing and strictly enjoining the said defendants and the persons before mentioned in manner aforesaid.

And may it please your honor- to grant unto your orator the people's writ of summons, issuing out of and under the seal of this honorable court, to be directed to the said defendants, Alexander White, Margaret White, Elsie White, Mary S. White, Annie C. White, James B. White, and Ann White, therein and thereby commanding them and each of them, on a certain day and under a certain penalty to

be therein inserted, that they personally be and appear before this honorable court on the first day of the next term thereof to be held at the court-house, in the district aforesaid, then and there to answer all and singular the premises and to stand to and abide by and perform such order and decree therein as to your honors shall seem agreeable to equity and good conscience.

154 And your orator will ever pray, etc.

FREDERICK W. COTZHAUSEN.

A. B. BALDWIN,
Complainant's Solicitor.

NORTHERN DISTRICT OF ILLINOIS, } ss:
Cook County, }

On this 13th day of July, one thousand eight hundred and eighty-two, personally came before me Frederick W. Cotzhausen, who, being duly sworn, saith that he is the complainant named in the above-entitled bill; that he has subscribed the bill, and that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein stated upon information and belief, and as to those matters he believes it to be true.

FREDERICK W. COTZHAUSEN.

Subscribed and sworn to before me this 13th day of July, A. D. 1882.

[SEAL.] FRANK A. MOORE,
Notary Public.

Endorsed: Filed July 15, 1882. Wm. H. Bradley, cl'k.

155 On the same day, to wit, on the fifteenth day of July, 1882, there issued out of said clerk's office a writ of subpœna in said entitled cause; which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

156 *Subpœna.*

UNITED STATES OF AMERICA, *Northern District of Illinois:*

The United States of America to Alexander White, Margaret White, Elsie White, Mary S. White, Annie C. White, James B. White, and Ann White, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of August next, to answer the bill of complaint of Frederick W. Cotzhausen, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 15th day of July, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the 107th.

[SEAL.] WM. H. BRADLEY, *Clerk.*

157 *Memorandum.*

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable the complainant's bill will be taken against them as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

Circuit Court of the United States of America, Northern District of Illinois, *ss:* July Term, A. D. 1882. In Chancery.

FREDERICK W. COTZHAUSEN *vs.* ALEXANDER WHITE.

To Alexander White, Margaret White, *et al.:*

Take notice that the complainant will move this honorable court, on the 31st day of July, A. D. 1882, or as soon thereafter as counsel can be heard, that a writ of injunction issue against the within and above named defendant in accordance with the prayer of the bill herein.

Yours, etc., A. B. BALDWIN,
Comp't's Solicitor.

F. W. COTZHAUSEN, *Of Counsel.*

Dated this 15th day of July, A. D. 1882.

158 *Appearance.*

I hereby enter the appearance of Margaret White, Elsie White, Mary S. White, Annie C. White, James B. White, and Ann White, the defendants herein named, this 15th day of July, A. D. 1882.

JOSEPH N. BARKER,
Sol'r for said Defendants.

Marshal's Return.

I have served the within writ upon Alexander White, therein named, on the 26 day of July, A. D. 1882, by personally delivering to him a true copy of the same on the aforesaid day.

A. M. JONES, *U. S. Marshal,*
By W. L. RINGLAND, *Deputy.*

(Endorsed:) Filed Aug. 7th, A. D. 1882. W. H. Bradley, clerk.

Afterwards, to wit, on the thirty-first day of July, 1882, came Ann White, Margaret White, *et al.*, by their solicitor, and filed in said clerk's office their answer to the bill in said entitled cause; which said answer is in the words and figures following, to wit:

159 *Answer.*

Circuit Court of the United States, Northern District of Illinois.
In Chancery.

FREDERICK W. COTZHAUSEN *vs.* ALEXANDER WHITE *et als.*

The several and joint answers of Ann White, Margaret White, Elsie White, Mary S. White, Annie C. White, and James B. White, defendants, to the bill of complaint of Frederic W. Cotzhausen, complainant.

To the honorable judges of the circuit court of the United States for the northern district of Illinois:

These defendants, now and at all times hereinafter, saving to themselves all manner of benefit and advantage of exception which can or may be had or taken to the many uncertainties, errors, and other imperfections to said bill contained, for answer thereunto, or to so much and such parts thereof as these defendants are advised it is or are material or necessary for them to make answer unto, this defendant, Ann White, answering, says that she admits that on the 9th day of April, 1872, her son, Alexander White, was appointed the administrator of the estate of his father, Alexander White, deceased, who left a large amount of money and securities, all of which passed into the hands of his son, Alexander White,
160 as such administrator, to wit, of the cash value of over two hundred thousand dollars, of which sum her son, Alexander White, appropriated for his own use and did use more than the sum of one hundred and twenty-nine thousand dollars; of which sum Ann White, this defendant, as widow of Alexander White, deceased, was entitled to the one-third part thereof, viz., more than the sum of forty-three thousand dollars, as her dower interest in said sum of more than one hundred and twenty-nine thousand dollars.

And this defendant further says that upon accounting with her, to wit, on the 21st day of July, 1879, the sum of forty-three thousand two hundred and fifty-six $\frac{56}{100}$ dollars ($43,256.56) was found to be due the said Ann White, this defendant, from her son, the said Alexander White, and that on the 21st day of July, 1879, the said Alexander White, being so indebted to the said Ann White, this defendant, in the sum of forty-three thousand two hundred and fifty-six $\frac{56}{100}$ dollars ($43,256.56), made and delivered to her his certain promissory note of that date, with warrant of attorney to confess judgment thereto attached, and thereby promised to pay her the said sum of money one day after the date thereof, with interest thereon at the rate of eight per cent. per annum.

And this defendant further says that to secure payment of the principal sum and interest above mentioned the said Alexander

White, her son, assigned, transferred, and set over to Ann White, this defendant, at various times and long prior to the judgment on which this bill is filed, the following described personal and real properties as collateral security for the above-described judgment note, the proceeds of which were to apply on the said prin-
161 cipal sum and interest, to wit:

1. A promissory note, dated June 12th, 1873, for $4,000, made by R. Fowler (now deceased), payable 60 days after date thereof, and on which $2,000 remained unpaid when assigned.

2. A promissory note, dated July 6th, 1875, for $60, made by C. F. Brothers, payable 90 days after the date thereof.

3. A promissory note, dated July 10th, 1875, for $150, made by John Taylor, payable on demand.

4. A due bill, dated July 19th, 1875, for $200, made by John Reid, payable about 30 days after the date thereof.

5. A promissory note, dated Sept. 4th, 1875, for $1,727.94, made by John Reid, payable on demand.

6. A promissory note, dated Oct'b'r 1st, 1875, for $300, made by Alexander Sullivan, payable one year after date thereof.

7. A promissory note, dated Feb'y 1st, 1876, for $25, made by W. H. Wilcox, payable on demand.

8. A promissory note, dated March 7th, 1876, for $75, made by H. G. Howe, payable one day after the date thereof.

9. A promissory note, dated Aug. 8th, 1876, for $220, made by J. F. Gookins, payable 60 days after the date thereof.

10. A promissory note, dated March 1st, 1877, for $454.85, made by S. B. Munson, Jr., payable one year after date thereof.

11. A promissory note, dated March 8th, 1877, for $125, made by C. E. & M. E. Quinlan, payable four months after date thereof.

12. A promissory note, dated April 12th, 1877, for $100, made by C. E. & M. E. Quinlan, payable ten days after the date thereof.

162 13. A promissory note, dated Sept. 1st, 1877, for $5,000, made by the Jenison Heating & Ventilating Co., payable one year after the date thereof.

14. A promissory note, dated Sept. 28th, 1877, for $13.20, made by M. A. Wakefield, payable on demand.

15. A due bill, dated December 7th, 1877, for $458.73, made by S. B. Munson, Jr.

16. A due bill, dated May 15th, 1878, for $484.30, made by S. B. Munson, Jr., on which $100 had been paid when assigned.

17. A due bill, dated July 26th, 1878, for $50, by the Jenson H. & Ventilating Co.

18. A promissory note, dated Dec. 20th, 1878, for $1,500, made by S. B. Munson, Jr., payable 30 days after the date thereof.

19. A claim against the American Oleograph Co. of Wisconsin for about $5,000.

20. Certificate No. 438, dated Dec. 8th, 1879, for $1,419.25, of the receivers of the City Nat'l Bank of Chicago, on which about $300 remains unpaid.

21. A claim against one Horace B. Fry.

22. A claim against Kountze Brothers.

23. One hundred and fifty shares of the capital stock of the American Oleograph Company of Wisconsin.

24. Eight hundred and fifty-seven (857) shares of the capital stock of the Jenson Heating & Ventilating Company of Illinois.

25. Two hundred and twenty-three (223) shares of the capital stock of the Au Sable Quarry Company of Illinois.

163 26. Mortgage bonds, of the par value of $1,800, of the Au Sable Quarry Company of Illinois.

All of which above described and mentioned promissory notes, due bills, claims, stocks, bonds, etc., are either worthless or of little value.

27. Also lot ten (10), in block four (4), in Stone's subdivision of the north fifteen acres of the west $\frac{1}{2}$ of the S. W. $\frac{1}{4}$ of section 34, T. 39, R. 14, in Cook county, Illinois, which lot said Alexander White conveyed to Ann White, this defendant, by deed dated August 29th, 1879. This lot was first, however, conveyed to one Wm. S. McMicken to indemnify him for signing a certain bond for Alexander White, and said McMicken thus became liable for the payment of some eleven hundred dollars ($1,100). The said McMicken then conveyed the said lot to one Thomas W. Phillips, who now holds the legal title thereof as trustee, first to pay the said eleven hundred dollars and then to pay the surplus, if any, to said Ann White, this defendant; also undivided one-fifth interest of his interest in certain oil paintings by a bill of sale as hereinafter stated.

And this defendant further says that on or before the 4th day of September, 1879, in the circuit court of Cook county, in the State of Illinois, judgment was entered up against the said Alexander White in favor of the said Ann White, this defendant, for the sum of forty-three thousand eight hundred and seven and $\frac{50}{100}$ ($43,807.50) dollars, being the amount due on the above-described judgment

164 note, with interest, costs, etc.; and this defendant further says that the above-described judgment note, the above-described personal and real properties as collateral security thereto, and the confession of judgment thereon, as above described, were each and all made, given, delivered, and confessed in good faith and for a real and *bona fide* and valuable consideration and indebtedness of forty-three thousand two hundred and fifty-six $\frac{56}{100}$ ($43,256.56) dollars, which sum her son, Alexander White, owed this defendant, Ann White.

And this defendant further says that she has been informed and believes it to be true that her son, Alexander White, was at one time the owner in fee of the several pieces of real estate as mentioned and described in said bill of complaint, and that on or about the 16th day of July, 1879, he conveyed the same at the time and for the amount and to the parties, respectively, as in said bill of complaint alleged; and, further, she has been informed and believes it to be true that said conveyances were real and *bona fide* conveyances and made to pay and satisfy real and *bona fide* indebtedness of the amounts as stated both in said conveyances and in said bill of complaint.

These defendants, Elsie White, Mary S. White, Annie C. White, and James B. White, answering, say that they admit that at one time and long prior to the judgment against Alexander White he, the said Alexander White, was the owner of the following-described property, to wit: Sublot two (2) of lot four (4) of block thirty-three (33), in the original town of the city of Chicago; also lots
165 one (1) and two (2) of sublot five (5) of lot four (4) of block thirty-three (33), in the original town of the city of Chicago; also the south seventeen (17) feet of lot twenty-seven (27), lots thirty (30), thirty-one (31), thirty-four (34), thirty-five (35), thirty-eight (38), thirty-nine (39), forty-two (42), and forty-three (43), in blocks forty-six (46), forty-seven (47), and fifty-eight (58), in the canal trustees' subdivision of the north half of section twenty-seven (27), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian, all situated in Cook county, State of Illinois.

These defendants, Elsie White, May S. White, Annie C. White, and James B. White, further answering, say that said Alexander White was the administrator of the estate of his father, Alexander White, deceased, who left a large amount of money and securities, all of which passed into the hands of Alexander White, as such administrator, to wit, of the cash value of over two hundred thousand dollars, of which sum the said Alexander White appropriated for his own use and did use more than the sum of one hundred and twenty-nine thousand dollars, of which sum we, these defendants, were entitled to four-sixths thereof, as heirs of Alexander White, deceased, less the dower of Ann White, our mother and widow of Alexander White, deceased, being the sum of fifty-six thousand eight hundred and fifty-nine $\frac{20}{100}$ dollars ($56,859.20); and, further, that upon an accounting with us, on the 16th day of July, A. D. 1879, that sum was found to be due us by said Alexander White, and, in order to pay the same and in satisfaction of said indebtedness, the said Alex-
ander White made and delivered to us his warranty deed for
166 the real property above described and referred to in said creditors' bill, and, on the 18th day of July, 1879, made a bill of sale of an undivided four-fifth interest of his interest in certain oil-paintings, to wit:

Faust and Margurite, by Schaefels.
The Little Coquette, by Chaplin.
Reverie, by Aubert.
Objects of Art, by Roszezewski.
The Convalescent, by Hue.
The Jewels, by Toulmouse.
The Cock Fight, by Jerome.
Madonna and Child, by Muller.
Rainy Day in the Alps, by Kindler.
Sheep in a Snow Storm, by Schenck.
A New England Home, by Shaughnessy.
Coming Home, by Shaughnessy.
Azalens, by Lambdin.
Two volumes of photographs.

To these defendants, James B. White, Elsie White, Mary S. White, Annie C. White, and Ann White; that said conveyance and bill of sale were a real and *bona fide* conveyance and bill of sale, and made to pay and satisfy a real and *bona fide* indebtedness of fifty-six thousand eight hundred and fifty-nine $\frac{20}{100}$ ($56,859.20) dollars, which sum said Alexander White owed to us, the said defendants.

The said Margaret White, one of said defendants, admits
167 that at one time, and being prior to the judgment on which this bill is filed against Alexander White, he, the said Alexander White, was the owner of the following-described real property, to wit: The north ten (10) acres of the south twenty (20) acres of the southeast quarter of the northeast quarter of section seventeen (17), in township thirty-eight (38) north, of range fourteen (14) east, of the 3rd P. M.; also lots fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty (20), in block fourteen 14), and lots eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), and thirty-one (31), in block fifteen (15), and lots twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), and forty-five (45), in block sixteen (16), in Adam Smith's subdivision of the south half of the north half of the southeast quarter and the southwest quarter of section thirty-six (36), in township thirty-nine (39) north, range thirteen (13) east, of the 3rd P. M.; also lots three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), and eleven (11), in H. M. Thompson's subdivision of lots twenty (20), twenty-one (21), twenty-two (22), and twenty-three (23), in block twenty-four (24), of Elston's addition to Chicago; also lots forty-nine (49), fifty (50), fifty-one (51), fifty-two (52), fifty-three (53), and the east eight (8) feet of lot fifty-four (54), in block sixty-one (61), of the canal trustees' subdivision of section seven (7), in township thirty-nine (39)
168 north, range fourteen (14) east, of the 3rd P. M., all situated in Cook county, State of Illinois.

This defendant, Margaret White, further answering, says that said Alexander White was the administrator of the estate of his father, Alexander White, deceased, who left a large amount of money and securities, all of which passed into the hands of Alexander White as such administrator, to wit, of the cash value of over two hundred thousand dollars, of which sum the said Alexander White appropriated for his own use and did use more than the sum of one hundred and 20-nine thousand dollars, and of which sum this defendant, Margaret White, was entitled to one-sixth part thereof as heir of Alexander White, deceased, less the dower interest of Ann White, my mother and widow of Alexander White, deceased, being the sum of fourteen thousand two hundred and fourteen $\frac{80}{100}$ ($14,214.80) dollars; and, further, that upon an accounting with me on the sixteenth day of July, A. D. 1879, that sum was found to be due me by said Alexander White, and in order to pay the same and in satisfaction of said indebtedness the said Alexander White made and delivered to me his warranty deed for the real property above described and referred to in said creditors' bill; that said conveyance

was a real and *bona fide* conveyance and made to pay and satisfy a real and *bona fide* indebtedness of fourteen thousand two hundred and fourteen and $\frac{80}{100}$ ($14,214.80) dollars, which sum said Alexander White owed to me, the said defendant, Margaret White.

And these defendants, Ann White, Margaret White, Elsie White, Mary S. White, Annie C. White, and James B. White, further
169 answering, say that they deny that Alexander White, either as administrator of the estate of Alexander White, deceased, or in any other capacity, was ever by their consent permitted or by their knowledge authorized in any way or under any circumstances "to manage and conduct the whole or any part of said estate as left by his father for the joint benefit of himself and the other parties therein interested," or to use, invest, and reinvest the proceeds, rents, issues, and profits of said estate as his best judgment might direct, or to in any way act as "the agent and representative of the family in all matters and things thereto appertaining;" all of which above allegations are contained in the complainant's said bill of complaint.

And these defendants further say that if Alexander White did ever so act as above alleged or did ever represent himself as the agent as above alleged he did so on his own account and on his own responsibility and without the permission, consent, knowledge, or authority of these defendants, Ann White, Margaret White, Elsie White, Mary S. White, Annie C. White, and James B. White.

And these defendants further say that they deny that ever with their "consent and concurrence" the alleged indebtedness of said Alexander White to said complainant was ever incurred or ever as "the agent and representative" of these defendants, as in said bill of complaint alleged; and, further, that if ever Alexander White avowed to said complainant, as alleged in said bill of complaint, that certain contracts and obligations were concluded between said complainant and said Alexander White for the benefit of said
170 estate of Alexander White, deceased, and that he was duly authorized so to do, these defendants say it was done without their permission, consent, knowledge, or authority.

And these defendants further say that they deny that they in any way or manner ever subsequently ratified certain alleged contracts between Alexander White and the said complainant, or that they in any way or manner ever confirmed "all acts and doings of said Alexander White in that behalf," all of which allegations are contained in said bill of complaint.

These defendants neither admit nor deny that Alexander White was engaged in mercantile business, they having no knowledge on the subject, but verily believe he was not so engaged.

These defendants had or have no knowledge as to any debts, securities, or stocks due or owing to Alexander White, nor of any property (real or personal) held or owned by him, nor of any beneficial interest therein, nor of any profits thereof, nor of any money in coin or bank bills, nor of any deposits in any bank or elsewhere to his credit or held by some other person in trust or otherwise for his benefit, except as hereinbefore stated.

These defendants, further answering, say that they have fully and in detail stated all the facts and circumstances within their knowledge as to how the indebtedness to them by Alexander White accrued, which was that the money went into his hands as administrator, and that he, for his own uses and purposes, spent the same, and being unable to repay them otherwise made and delivered the said above-described judgment note, together with the above-
171 described personal and real properties, as collateral security thereto, and conveyed said above-described real property, and that all the same were given in good faith and for a real, *bona fide*, and valuable consideration, as hereinbefore stated.

And these defendants, Ann White, Margaret White, Elsie White, Mary S. White, Annie C. White, and James B. White, deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the complainant's said bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and pray to be hence dismissed with their reasonable costs and charges most wrongfully sustained in this behalf.

JAMES B. WHITE, [SEAL.]
ELSIE WHITE, [SEAL.]
ANNIE C. WHITE, [SEAL.]
MARGARET WHITE,
ANN WHITE,
MARY S. WHITE,
By J. N. BARKER, *Their Solicitor.*

JOSEPH N. BARKER,
Solicitor for said Defendants.

172 STATE OF ILLINOIS, } *ss:*
County of Cook, }

On this 31st day of July, A. D. 1882, before me personally appeared James B. White, Elsie White, Annie C. White and made oath that they have heard read the above answer subscribed by them and know the contents thereof, and that the same is true of their own knowledge, except as to matters therein stated to be on their information and belief, and as to those matters they believe them to be true.

Subscribed and sworn to before me this 31st day of July, A. D. 1882.

[SEAL.] JAMES T. ALLEN,
Notary Public.

(Endorsed:) Filed July 31st, 1882. William H. Bradley, clerk.

On the same day, to wit, on the 31st day of July, 1882, came James B. White, Elsie White, and Annie C. White and filed in said clerk's office their affidavit in said entitled cause; which said affidavit is in the words and figures following, to wit:

173 *Affidavit.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, County of Cook, }

Circuit Court of the United States for the Northern District of Illinois.
In Chancery.

FREDERICK W. COTZHAUZEN }
vs. } No. 17924.
ALEXANDER WHITE *et al.* }

James B. White, Elsie White, and Annie C. White, each being first duly sworn, say that they are defendants in the above-entitled suit and have severally filed their answers to the bill of complaint therein, and that said answers and the facts therein set forth are true; that deponents have read the several answers of Margaret White, Mary S. White, and Ann White, the other defendants herein, and know the contents thereof, and that the said answers of the said other defendants are also true to the knowledge of these defendants.

And these deponents further say that, besides and in addition to the several pieces and parcels of land described in said bill of complaint, which were conveyed to the defendants, Margaret White,
Elsie White, Mary S. White, Annie C. White, and James B.
174 White, by the defendant, Alexander White, by deed of conveyance dated on or about the 16th day of July, A. D. 1879, in settlement and payment of his indebtedness to them of that date, they are the owners in fee of other real estate situate in the county of Cook, State of Illinois, of the value of three hundred thousand dollars over and above all incumbrances and liens upon the same, and are abundantly able to pay and satisfy tenfold any judgment which said complainant can possibly recover against them in the above-entitled cause. Wherefore they insist that the injunction prayed for in this cause ought not to be granted.

JAMES B. WHITE. [SEAL.]
ELSIE WHITE. [SEAL.]
ANNIE C. WHITE. [SEAL.]

Subscribed & sworn to before me this 31st day of July, A. D. 1882.

[SEAL.] JAMES T. ALLEN,
Notary Public.

Endorsed: Filed Jul. 31, 1882. W. H. Bradley, clerk.

Afterwards, to wit, on the 4th day of September, 1882, came the complainant, by his solicitor and filed in said clerk's office his replication to the answer of Ann White *et al.* in said entitled; cause which said replication is in the words and figures following, to wit:

175 *Replication.*

Circuit Court of the United States, Northern District of Illinois. In Equity.

FREDERICK W. COTZHAUSEN *vs.* ALEXANDER WHITE *et al.*

The replication of Frederick W. Cotzhausen, complainant, to the answer of Ann White, Margaret White, Elsie White, Mary S. White, Annie C. White, and James B. White, defendants.

This repliant, saving and reserving unto himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, says that he will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in said answer contained material or effect-
175½ ual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill *it* has already prayed.

F. W. COTZHAUSEN,
Complainant.

ALGERNON B. BALDWIN,
Complainant's Solicitor.

Endorsed: Filed this 4th day of September, A. D. 1882. Wm. H. Bradley, clerk.

176 Afterwards, to wit, on the eleventh day of October, in the adjourned October term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

FREDERICK W. COTZHAUSEN *vs.* ALEXANDER WHITE *et al.* } In Chancery. No. 17974.

The motion of the complainant to consolidate this cause with general number 17743 being now heard, and the court not being

sufficiently advised thereto takes said motion under advisement. The time for the complainant to take proofs herein is hereby extended until the further order of the court.

Afterwards, to wit, on the first day of November, in the adjourned October term of said court, 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

FREDERICK W. COTZHAUSEN
vs.
ALEXANDER WHITE *et al.* } In Chancery.

On motion, the complainant is ruled to close his proofs herein by the first day of December next.

177 Afterwards, to wit, on the fourteenth day of April, in the adjourned March term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

FREDERICK W. COTZHAUSEN
vs.
ALEXANDER WHITE *et al.* } In Chancery. Gen. Nos. 17743 and 17974.

Now come the parties, by their solicitors, and now comes on to be heard the motion of the complainant to consolidate the two causes entitled as above and numbered, respectively, 17743 and 17974, and after hearing the arguments of counsel the court, being sufficiently advised in the premises, sustains said motion, and thereupon it is ordered that said two causes be consolidated and proceed as one cause, and that the testimony taken in the first cause stand as testimony in the second cause; and it is further ordered that the defendants close their testimony herein by the first day of June next.

178 Afterwards, to wit, on the twenty-second day of December, in the December term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

FREDERICK W. COTZHAUSEN
vs.
ALEXANDER WHITE *et al.* } In Chancery.

Now come the parties, by their solicitors, and this cause comes on to be heard upon the pleadings and proofs, and after hearing the arguments of counsel in part further hearing herein is hereby postponed until to-morrow morning.

Afterwards, to wit, on the twenty-third day of December, in the December term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

FREDERICK W. COTZHAUSEN
vs.
ALEXANDER WHITE *et al.* } In Chancery.

Now again come the parties, by their solicitors, and this cause again comes on to be heard in pursuance of the order of postponement entered herein yesterday, and after hearing the concluding arguments of counsel the court takes the same under advisement.

179 Afterwards, to wit, on the twelfth day of January, 1885, in the December term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

FREDERICK W. COTZHAUSEN
vs.
ALEXANDER WHITE, MARY S. WHITE, ELSIE WHITE, Annie C. White, James B. White, Margaret White, and Ann White. } In Chancery.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

I. That there is due and owing at the date hereof to the complainant herein from the judgment debtor, Alexander White, on account of the two several judgments referred to in the complainant's original bill, the sum of seventeen thousand two hundred and twenty-two dollars and forty-six cents ($17,222.46) for principal and interest.

II. That the conveyance dated the 16th day of July, A. D. 1879, executed by Alexander White to Elsie White, Mary S. White, Annie C. White, and James B. White for a pretended consideration
180 of fifty-six thousand eight hundred and fifty-nine dollars and twenty cents ($56,859.20), recorded on the seventeenth day of July, 1879, in the office of the recorder of deeds of Cook county, Illinois, in volume 890 of records, at page 421, and that certain other conveyance, bearing even date therewith, executed by said Alexander White to Margaret White for a pretended consideration of fourteen thousand two hundred and fourteen dollars and eighty cents ($14,214.80), recorded on the seventeenth day of July, 1879, in the office of the recorder of deeds of Cook county, Illinois, in volume 905 of records, at page 47, were made without adequate consideration and with intent to hinder, delay, and defraud the complainant in this suit, a creditor as aforesaid.

III. That that certain bill of sale made, executed, and delivered by said Alexander White, on or about the eighteenth day of July, 1879, to Ann White, Elsie White, Mary S. White, Annie C. White, and James B. White, defendants herein, of certain oil paintings and pictures therein named and described, was made without adequate consideration and with intent to hinder, delay, and defraud said complainant, a creditor as aforesaid.

180½ IV. That that certain judgment entered in the circuit court of Cook county by Ann White against Alexander White, on or about the fourth day of September, 1879, by virtue of a note and warrant of attorney to confess judgment, under date of July 21st, 1879, for forty-three thousand eight hundred and seven dollars and fifty cents ($43,807.50) and the accompanying conveyance and transfer as collateral security thereto of certain personal and real property, to which reference is made at length in the answer of Ann White, were all and singular made and confessed without adequate consideration and with intent to hinder, delay, and defraud the said complainant, a creditor as aforesaid.

V. That said several conveyances, assignments, transfers, and judgment be, and they hereby are, set aside and declared void as against this complainant, and that the complainant is entitled to and has a lien on all the property of every description belonging to said judgment debtor, Alexander White, and upon all that was transferred or assigned by said Alexander White to the defendants, Ann White, Elsie White, Mary S. White, Annie C. White,

181 Margaret White, and James B. White, as aforesaid, and upon the rents, issues, and the profits of the same and the proceeds thereof, if heretofore any of the property so conveyed and transferred to his said relatives has been disposed of or converted by them or either of them, so far as may be necessary to satisfy the complainant's aforesaid demand, with interest and costs.

VI. That the complainant recover of the defendants, Alexander White, Elsie White, Mary S. White, Annie C. White, Margaret White, James B. White, and Ann White, his costs and expenses of suit.

VII. That the defendants be, and they hereby are, allowed sixty days from the date of this decree within which to pay into court for use of the complainant the amount hereby adjudged to be due him, with interest and costs of suit, and that in default of so doing the said lots and premises in this decree described be sold at public auction to the highest bidder for cash by Henry W. Bishop, master in chancery of this court; and it is further ordered that he make such sale at the Adams street entrance of the United States

182 custom-house building, in *in* the city of Chicago, in Cook county, Illinois, and that he give public notice of the time and place of holding such sale by publishing an advertisement thereof once a week for three successive weeks in a newspaper published in the city of Chicago, county of Cook, and State of Illinois, the first publication of such notice being not less than twenty-one days previous to the time of such sale; that at such sale the complainant or any of the parties to this cause may be the purchaser or purchasers; that the said master shall make, execute, and deliver

to the purchaser at any such sale the usual master's deed of conveyance of the premises so sold. It is ordered further that the said master make report to this court of such sale and of his acts and doings thereunder for approval and confirmation, and that he retain from the moneys received on said sale the amount of his fees, commissions, and disbursements thereon and bring the residue of such moneys into court for use of this complainant and to abide the further order of the court, and that he take the receipt of the clerk therefor and file the same with said report, and if the price
182½ for which said premises shall be so sold shall be insufficient to satisfy the amount so found and adjudged to be due to the complainant, with the interest thereon and the costs of suit and expenses of sale as aforesaid, that the said master specify the amount of such deficiency in his said report of sale, and that such further proceeding be had thereupon as may be in accordance with law and equity.

And it is further ordered, adjudged, and decreed that upon the execution and delivery of the deed or deeds of conveyance as aforesaid the grantee or grantees, his or their heirs or assigns, be let into possession of the portion of the said premises so conveyed to him or them, and that any of the parties in this cause who may be in possession of said premises or any part thereof, and any person who since the commencement of this suit has come into possession under them or either of them, on the production of said master's deed of conveyance and of a certified copy of the order of this court confirming the report of said sale, surrender possession thereof to
183 such grantee or grantees, his or their heirs or assigns.

VIII. It is also adjudged and decreed that the complainant be at liberty to apply to this court at any time, on proper cause being shown, for the appointment and assistance of a receiver, with the usual powers and duties as such, and for further directions upon the foot of this decree.

IX. And, on reading and filing the affidavit and petition of the complainant heretofore presented and filed and after hearing counsel for both complainant and defendant, it is further ordered, adjudged, and decreed that such complainant have leave to file, within three days from the date hereof, a written statement in the nature of a supplemental bill to bring before the court the matters stated in such petition relative to the two additional judgments recovered in the circuit court of Cook county and State of Illinois since the filing of the original bill of complaint, and that the defendants be required to demur, plead, or answer thereto at or before the first Monday of February next, as they shall be advised.

184 The following is a description of the real and personal property embraced within said fraudulent conveyances and affected by this decree, viz:

Real Estate Conveyed to Elsie White, Mary S. White, Annie C. White, and James B. White.

Sublot 2 of lot 4, in block 33, in the original town of Chicago, State of Illinois.

Also the south 17 feet of lot 27; lots 30, 31, 34, 35, 38, 39, 42, and 43, in blocks 46, 47, and 58, in the canal trustees' subdivision of the west half of section 27, township 39 north, of range 14 east, of the third principal meridian, all situated in Cook county, State of Illinois.

Also lots 1 and 2 of sublot 5 of lot 4 of block 33, in the original town of Chicago, State of Illinois.

Real Estate Conveyed to Margaret White.

The north 10 acres of the south 20 acres of the southeast quarter of the northeast quarter of section 17, in township 38 north, of range 14 east, of the third principal meridian, State of Illinois.

185 Also lots 3, 4, 5, 6, 7, 8, 9, 10, and 11, in H. M. Thompson's subdivision of lots 20, 21, 22, and 23, in block 24 of Elston's addition to Chicago, State of Illinois.

Also lots 15, 16, 17, 18, 19, and 20, in block 14, and lots 11, 12, 13, 14, 15, 16, 17, 25, 26, 27, 28, 29, 30, and 31, in block 15, and lots 28, 29, 30, 31, and 45, in block 16, in Adam Smith's subdivision of the south half of the north half of the southwest quarter and the southwest quarter of the southwest quarter of section 36, in township 39 north, of range 13 east, of the third principal meridian, State of Illinois; as also lots 49, 50, 51, 52, 53, and the east 8 feet of lot 54, in block 61, of the canal trustees' subdivision of section 7, in township 39 north, of range 14 east, of the third principal meridian, State of Illinois, subject to the dower right of Ann White.

Paintings and pictures transferred to Ann White, Elsie White' Mary S. White, Annie C. White, Margaret White, and James B' White:

His undivided fifth interest in—
Faust and Marguerite, by Schaefels.
The Little Coquette, by Chaplin.
Reverie, by Aubert.
The Convalescent, by Herre.
Objects of Art, by Raszezowski.
The Jewels, by Taulmaure.
The Cock Fight, by Jerome.
Madonna and Child, by Muller.
Rainy Day in the Alps, by Rindler.
Sheep in a Snow Storm, by Schenck.

186 A New England Home, by Shaughnessy.
Coming Home, by Shaughnessy.

Azelaus, by Lambdin.
Two volumes of photographs.

Real and personal property assigned and transferred to Ann White as collateral security to judgment note:

1. A promissory note, dated June 12, 1873, for $4,000, made by R. Fowler (now deceased), payable sixty days after date thereof, and on which $2,000 remained unpaid when assigned.

2. A promissory note, dated July 6, 1875, for $60, made by C. F. Brothers, payable ninety days after the date thereof.

3. A promissory note, dated July 10, 1875, for $150, made by John Taylor, payable on demand.

4. A due bill, dated July 19, 1875, for $200, made by John Reid, payable about thirty days after the days thereof.

5. A promissory note, dated September 4, 1875, for $1,727.94, made by John Reid, payable on demand.

6. A promissory note, dated October 1, 1875, for $300, made by Alexander Sullivan, payable one year after the date thereof.

187 7. A promissory note, dated Feb. 1, 1876, for $25, made by W. H. Wilson, payable on demand.

8. A promissory note, dated March 7, 1876, for $75, made by H. G. Howe, payable one day after the date thereof.

9. A promissory note, dated Aug. 8, 1876, for $220, made by J. F. Cookins, payable sixty days after the date thereof.

10. A promissory note, dated March 1, 1877, for $454.35, made by S. B. Munson, Jr., payable one year after the date thereof.

11. A promissory note, dated March 8, 1877, for $125, made by C. E. & M. E. Quinlan, payable four months after the date thereof.

12. A promissory note, dated April 12, 1877, for $100, made by C. E. & M. E. Quinlan, payable 10 days after the date thereof.

13. A promissory note, dated Sept. 1, 1877, for $5,000, made by the Jenison Heating and Ventilating Co., payable one year after the date thereof.

14. A promissory note, dated Sept. 28, 1877, for $13.20, made by M. A. Wakefield, payable on demand.

15. A due bill, dated Dec. 7, 1877, for $458.73, made by S. B. Munson, Jr.

188 16. A due bill, date- May 15, 1878, for $484.30, made by S. B. Munson, Jr., on which $100 had been paid when assigned.

17. A due bill, dated July 26, 1878, for $50, made by the Jenison Heating & Ventilating Co.

18. A promissory note, dated Dec. 20, 1878, for $1,500, made by S. B. Munson, Jr., payable in thirty days after the date thereof.

19. A claim against the American Oleograph Co. of Wisconsin for about $5,000.

20. Certificate No. 438, dated Dec. 8, 1879, for $1,419.25, of the receiver of the City National Bank of Chicago, on which about $300 remains unpaid.

21. A claim against one Horace B. Fry.

22. A claim against Rauntze Brothers.

23. 150 shares of the capital stock of the American Oleograph Co. of Wisconsin.

24. 857 shares of the capital stock of the Jenison Heating and Ventilating Company of Illinois.

25. 223 shares of the capital stock of the Au Sable Quarry Company of Illinois.

189 26. Mortgage bonds of the par value of $1,800 of the Au Sable Quarry Company of Illinois.

27. Also lot ten (10), in block four (4), in Stone's subdivision of the north fifteen (15) acres of the west half of the southwest quarter of section thirty-four (34), town. thirty-nine (39), range fourteen (14), in Cook county, Illinois, which lot said Alexander White conveyed to Ann White by deed dated August 29, 1879.

Afterwards, to wit, on the fourteenth day of January, 1885, came the complainant, by his solicitor, and filed in said clerk's office his supplemental bill in said entitled cause; which said supplemental bill is in the words and figures following, to wit:

190 *Supplemental Bill.*

United States Circuit Court, Northern District of Illinois. In Equity.

FREDERICK W. COTZHAUSEN
vs.
ALEXANDER WHITE, MARY S. WHITE, ELSIE WHITE, ANNIE C. WHITE, JAMES B. WHITE, MARGARET WHITE, and ANN WHITE.

To the hon. the judge of said court in chancery sitting:

Your orator, by way of supplement to his original bill herein, pursuant to leave heretofore specially granted by the court, complains of the defendants, and respectfully represents to your honors that the above-entitled suit is brought by this complainant, a judgment creditor of said Alexander White, for the purpose of obtaining a discovery of assets which cannot be reached by execution at law, and also to set aside and remove certain conveyances and

191 obstructions that have been fraudulently and inequitably interposed to prevent a sale on two several executions issued from the superior court of Cook county against the property of the above-named Alexander White and returned *nulla bona* on or about the 13th day of April, 1882, respectively.

That said suit, in due course of law and equity, has proceeded to the entry of a decree in favor of this complainant, under date of January 12, 1885, which, amongst other things, declares and judges to be void as against this complainant the several conveyances, transfers, and judgment- complained of in the original bill, and makes provision for the satisfaction of the two judgments docketed in the superior court of Cook county, to all of which, the record, files, and proceedings in said original suit, this complainant begs to refer, as if the same were herein repeated and made part of this supplemental complaint.

And your orator further represents that in the circuit court of Cook county, State of Illinois, in due course of proceedings, he recov-

ered at law, upon contract and written evidences of indebtedness, signed by said Alexander White, bearing date in February
192 and August, 1878, respectively—that is to say, long prior to the time of the alleged fraudulent conveyances complained of herein, two certain additional judgments for the damages which he, this complainant, had sustained and the costs of suit and charges of your orator by him about his said suits in that behalf expended, which were adjudged to your orator in and by the said court, whereof the said Alexander White was duly convicted, as by the record of said judgments in the office of the clerk of said court, reference being thereto had, and to which for greater certainty your orator prays leave to refer, will more fully and at large appear, viz:

No. 31070.

March 25, 1882.	Damages	$4,555 99	
	Fees	8 50	
			$4,564 49

No. 31071.

March 23, 1882.	Damages	$4,289 33	
	Fees	8 50	
			$4,297 83
			8,862 33

And your orator further represents that the said judgments so recovered in manner aforesaid remaining in full force and effect and the costs and damages aforesaid unpaid and unsatisfied, your orator, on or about the 29th day of March, 1882, for the purpose
193 of obtaining satisfaction of the said two judgments, sued and prosecuted out of the said court writs of *fieri facias* thereon, directed to the sheriff of said Cook county, that being the county in which the said defendant, Alexander White, resided at the time of the issuing of said writs. The said sheriff was commanded that of the goods, chattels, lands, and tenements of the defendant, Alexander White, in his county he cause to be made the amount of the two several judgments recovered by this complainant against said Alexander White in said circuit court of Cook county as aforesaid; that he should have the money at the clerk's office of said court, at Chicago, in said county, in ninety days from the date thereof to satisfy the judgments so recovered by your orator as aforesaid, and that he should have then and there those writs.

And your orator further represents that the said writs of *fieri facias*, before the delivery thereof to the said sheriff, were duly endorsed and were delivered to the sheriff on or about the date thereof, to be executed in due form of law.

And your orator further shows that the said sheriff of said county, on or about the 29th day of June, A. D. 1882, made return,
194 on said writs to him in that behalf directed and delivered as aforesaid, that no property being found in his county whereon to levy said writs he returned the same no part satisfied, as by said writs of *fieri facias* and the directions and return thereon

endorsed, now on file in the office of the clerk of said court, will more fully appear, and to which or to a copy whereof your orator prays leave to refer.

And your orator further shows that the said judgments still remains in full force and effect, not reversed or satisfied or otherwise vacated, and that the said Alexander White has not paid the same to your orator, but has hitherto wholly neglected and refused to do so; that there is now actually and equitably due to your orator upon the aforesaid two judgments the full amount thereof, with interest and subsequent costs, over and above all claims of said defendant by the way of set-off or otherwise.

And your orator further represents that of these two judgments he caused already due proof to be made on the hearing of the original suit, and caused, furthermore, it to appear by proper evidence in that behalf that the written indebtedness on
195 which said judgments were entered and recovered at law antedated the time of the alleged fraudulent conveyances, transfers, and judgment by Alexander White to his relatives which are complained of in the original bill, and that all and singular said proof was then and there received without objection, as will more fully appear from this witness' testimony and depositions on file and of record at pages 139, 140 of the printed case, and that all of the facts, law and equity, of the original case are equally applicable thereto.

But now so it is that the said defendants, combining and confederating together and contriving how to injure and defraud your orator in the premises, neglect or refuse to pay the amount so due to your orator on his said additional judgments recovered at law or to apply for that purpose any property, money, debts, or other equitable interests or things in action belonging to the defendant, Alexander White, all of which is contrary to equity and good conscience, and tends to the manifest wrong and injury of your orator in the premises.

To the end, therefore, that the said defendants may, if they
196 can, show why your orator should not have the relief hereby prayed, and may (an answer on oath being expressly waived), according to the best and utmost of their knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the premises, and may be decreed to pay your orator the additional amounts so as aforesaid due to him for principal, interest, and costs, and to apply for that purpose any money or property, real or personal, in law or equity, debts, choses in action, or equitable interests belonging to the said defendant, Alexander White, or held in trust for him, or in which he is in any way or manner beneficially interested.

And that it may be declared and adjudged that your orator is entitled to have the benefit of the said original suit and of all the proceedings therein, and that for that purpose this bill may be taken as supplemental to the said original bill, and that your orator may have the same relief against the defendants herein as he might have had if these two additional judgments and proceedings at law thereupon

had been originally embraced therein, and that your orator
197 may have such other and further relief as the nature of his case shall require and as shall be agreeable to equity and good conscience.

And may it please your honors to grant unto your orator the assistance of this honorable court, requiring the defendants and each of them, by the first Monday in February next, to answer all and singular these premises and to stand to and abide by and perform such order and decree therein as to your honors shall seem agreeable to equity and good conscience.

And your orator will ever pray, &c.

F. W. COTZHAUSEN,
Complainant.

EASTERN DISTRICT OF WISCONSIN, *ss:*

On this thirteenth day of January, A. D. 1885, personally came before me Frederick W. Cotzhausen, who, being duly cautioned and sworn, saith that he is the complainant in this bill; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge except as to the matters and things therein stated upon information and belief, and as to these matters he believes it to be true.

F. W. COTZHAUSEN.

198 Subscribed and sworn to before me the day and year above written.

[SEAL.] AUG. RICHTER, JR.,
Notary Public, Milwaukee Co., Wis.

Endorsed: Filed Jan'y 14, 1885. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the thirty-first day of January, 1885, came Ann White, Mary S. White, Elsie White, Annie C. White, and James B. White, by their solicitor, and filed in said clerk's office their answer to the supplemental bill in said entitled cause; which said answer is in the words and figures following, to wit:

199 *Answer to Supplemental Bill.*

United States Circuit Court for the Northern District of Illinois. In Equity.

FREDERICK W. COTZHAUSEN
vs.
ALEXANDER WHITE, MARY S. WHITE, ELSIE WHITE, ANNIE C. WHITE, MARGARET WHITE, ANN WHITE, and JAMES B. WHITE.

The joint and several answers of Ann White, Mary S. White, Elsie White, Annie C. White, and James B. White, defendants, to the supplemental bill of complaint filed in the above-entitled cause by Frederick W. Cotzhausen, complainant.

These defendants, saving to themselves all benefit or advantage of exception or otherwise that may be had or taken to the many

errors, uncertainties, and imperfections in said supplemental bill contained, for answer thereto or to so much thereof as these defendants are advised is material or necessary for them to make
200 answer to—they, severally answering, say that whether or not said complainant recovered two judgments in the circuit court of Cook county against said Alexander White, on the 23d and 25th days of March, 1882, for the sums of $4,555.99 and $4,289.33, respectively, and fees, or for any other amount, and whether or not said alleged judgments were recovered on contracts or written evidences of indebtedness signed by said Alexander White, bearing date either before or after February or August, 1878, and whether or not any executions or writs of *fieri facias* were issued thereon to the sheriff of said Cook county, by which writs the said sheriff was commanded — of the goods, chattels, lands, and tenements of said Alexander White he cause to be made the amount of said alleged judgments ninety days after the date of said writs, and whether or not said alleged writs were ever delivered to said sheriff or by him returned no part satisfied, and whether or not said alleged judgments or either of them still remain in full force or effect and not reversed or satisfied, and whether or not there is actually or equitably due to said complainant upon said alleged judgments
201 the full amount thereof, with interest and costs, or any other sum of money whatever, over and above all claims of said defendant, Alexander White, by way of set-off, these defendants have no knowledge or information on which they can found any belief, and they neither admit nor deny the allegations of said supplemental bill in that behalf, but leave said complainant to make such proof thereof as he may be able.

And these defendants deny that said complainant on the hearing of the said original suit caused due proof or any proof to be made of said alleged judgments, and deny that the alleged indebtedness on which said alleged judgments are claimed to be entered or recovered antedate the time of the conveyances and transfers alleged to have been fraudulently made or the judgment alleged to have been fraudulently confessed by said Alexander White in said original bill, and deny that such alleged proof was then and there made without objection or otherwise, and deny that it will so appear from the written testimony or depositions of record in said original cause.

And these defendants, further answering, severally deny that the conveyances of certain real estate mentioned and described in
202 said original bill and the transfer of certain personal property therein mentioned were made by said Alexander White to these defendants or either of them for the purpose of hindering, delaying, or defrauding said complainant in the assertion of his rights or to prevent him from enforcing or collecting any just demand he may have against said Alexander White or for the purpose of placing said real estate or said personal property beyond said complainant's reach.

And they further deny that said conveyances and transfers or either or any of them were made without any consideration, and deny that said real estate or personal property or any part or por-

tion of the same is held by these defendants or either of them in trust for said Alexander White or for his use or benefit.

On the contrary, they aver that said conveyances and transfers were made in good faith and for a valuable and adequate consideration, the same being in payment, satisfaction, and discharge of a valid and actual indebtedness of said Alexander White to these defendants, the amount of which indebtedness equaled and exceeded the total value of all the lands and personal property so con-
203 veyed and transferred to them and received by them in payment of said indebtedness as aforesaid, as is more fully and at length set forth in the several answers of these defendants to the said original bill, to which answers reference is hereby made and the same are prayed to be taken and accepted as a part and portion of this answer.

And these defendants further say that a large portion of the real estate so conveyed was encumbered by mortgages and the lien of several years' taxes, which largely impaired and lessened its apparent value, and the said personal property so transferred was almost, if not wholly, worthless.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that *there is* any other matter, cause, or thing in the said complainant's said supplemental bill contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this hon-
204 orable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

ANN WHITE,
ELSIE WHITE,
MARY S. WHITE,
ANNIE C. WHITE,
JAMES B. WHITE,
By JOSEPH N. BARKER,
Their Solicitor.

JOSEPH N. BARKER, *Sol.*
IRA W. BUELL, *Of Counsel.*

(Endorsed:) Filed Jan'y 31, 1885. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the ninth day of February, 1885, in the December term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, are the following entries, to wit:

Order.

205 FREDERICK W. COTZHAUSEN
vs.
ALEXANDER WHITE *et al.* } In Chancery.

It appearing to the court that the defendants, Alexander White and Margaret White, have not appeared herein to answer the supplemental bill of said complainant, and they being now in open court three times solemnly called to appear and plead, answer, or demur to said supplemental bill come not, but make default, it is thereupon ordered that their defaults be entered and that said supplemental bill be taken as confessed and true as against them and each of them.

Order.

FREDERICK W. COTZHAUSEN
vs.
ALEXANDER WHITE *et al.* } In Chancery.

Let the defendants, Ann White, Mary S. White, Elsie White, Annie C. White, and James B. White, upon the records, files, and proceedings heretofore had in this suit, show cause before this court, at the United States court-rooms, in the city of Chicago, on Thursday, February 12th, 1885, at the opening of court on that day or as soon thereafter as counsel can be heard, why the alleged im-
206 pertinent matter referred to in the annexed exceptions should not be expunged from their answer; why the complainant should not have immediate leave after hearing such exceptions to file a replication; why an order should not then be made referring the issue on such supplemental bill, answer, and reply to a master in chancery or examiner of the court, with directions to proceed without delay to a hearing thereof and examination of the witnesses orally, and why the supplemental cause should not otherwise be advanced and the complainant be granted such other or further relief as may be just and equitable.

On the same day, to wit, on the ninth day of February, 1885, came the complainant, by his solicitor, and filed in said clerk's office his exceptions to the answer of Ann White *et al.* in said entitled cause; which said exceptions are in the words and figures following, to wit:

Exceptions.

United States Circuit Court, Northern District of Illinois. In Equity.

FREDERICK W. COTZHAUSEN *vs.* ALEXANDER WHITE *et al.*

Exceptions taken by the above-named complainant to the answer of Ann White, Mary S. White, Elsie White, Annie C. White,
207 and James B. White, defendants, in answering the supplemental bill of the complainant heretofore filed by special leave of court.

For that the whole of the paragraph or paragraphs of said answer commencing with the words, "And these defendants, further answering, severally deny that the conveyances," &c., and ending with the words, "if not wholly worthless," near the concluding clause of said answer, is impertinent.

Wherefore this complainant insists that the said impertinent matter ought to be expunged therefrom and that he be required to reply merely to the other portions of said answer and no further.

Chicago, February 9, 1885.

ALGERNON B. BALDWIN,
Complainant's Solicitor.

F. W. COTZHAUSEN,
In Persona.

Endorsed: Filed Feb'y 9th, 1885. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 28th day of February, 1885, in the December term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

FREDERICK W. COTZHAUSEN
vs.
ALEXANDER WHITE, MARY S. WHITE, ELSIE WHITE, Annie C. White, James B. White, Margaret White, and Ann White. } In Chancery.

The court of its own motion sets aside and vacates the
208 decree entered herein of the twelfth of January, 1885, and also the orders entered herein of the date of February ninth, 1885; and now comes the complainant, by his solicitor, and moves the court for leave further to amend his original bill herein so as to include two additional judgments in his favor against the defendant, Alexander White, one on the twenty-third day of March, 1882, for forty-two hundred and eighty-nine dollars and thirty-three cents damages and eight dollars and fifty cents costs, and the other rendered on the twenty-fifty day of March, A. D. 1882, for forty-five hundred and fifty-five dollars and ninety-nine cents damages and eight dollars and fifty cents costs, so as to conform the pleadings to the proofs herein; which motion is granted by the court.

Afterwards, to wit, on the sixteenth day of March, 1885, came
the complainant, by his solicitor, and filed in said clerk's
209 office his amended bill in said entitled cause; which said amended bill is in the words and figures following, to wit:

Amendment to Bill of Complaint.

United States Circuit Court, Northern District of Illinois, *ss.* March Term, A. D. 1885.

FREDERICK W. COTZHAUSEN

vs.

ALEXANDER WHITE, MARY S. WHITE, ELSIE WHITE, ANNIE C. WHITE, JAMES B. WHITE, MARGARET WHITE, and ANN WHITE.

To the honorable the judges of said court, in chancery sitting:

Your orator, by way of amendment to his original bill herein filed, further states and represents to your honors that your orator, in addition to the two several judgments described in the original bill herein, also recovered in the circuit court of Cook county, State of Illinois, in the course of due proceedings therein had, two certain other judgments at law based upon contract and written evidences of indebtedness signed by Alexander White, bearing date
210 Feb-uary and August, 1878, respectively—that is to say, long prior to the time of the alleged fraudulent conveyances mentioned in the said original bill, to wit, one certain judgment in case No. 31070, recovered on the 25th day of March, 1882, for $4,555.99 damages and $8.50 costs, making a total amount of damages and costs of $4,564.49, and a certain other judgment, No. 31071, in said case, recovered March 23d, 1882, for $4,289.33 damages and $8.50 costs, making a total amount of $4,297.83 damages and costs, the two said judgments amounting to $8,862.32, and interest from time of recovery, which said amounts were severally adjudged to your orator in and by the said court whereof the said defendant, Alexander White, was duly convicted, as upon record of said judgments in the office of the clerk of said court, reference being thereto had and to which for greater certainty your orator prays leave to refer, more fully and at large appear.

And your orator further represents that such judgments so recovered in manner aforesaid remaining in full force and effect and the costs and damages aforesaid unpaid and unsatisfied, your
211 orator, on or about the 29th day of March, 1882. for the purpose of obtaining satisfaction of the said two judgments, sued out and prosecuted out of said court writs of *fieri facias* thereon, directed to the sheriff of said Cook county, that being the county in which said defendant, Alexander White, resided at the time of the issuing of said writs, by which said writs the said sheriff was commanded that of the goods, chattels, lands, and tenements of the defendant, Alexander White, in his county he caused to be made the amount of the two several judgments recovered by this complainant against said Alexander White in said circuit court of Cook county as aforesaid, and that he should have the money at the clerk's office of said court, at Chicago, in said county, in ninety days from the date thereof, to satisfy the judgments so recovered by your

orator as aforesaid, and that he should have then and there those writs.

And your orator further represents that the said writs of *fieri facias* before the delivery thereof to the sheriff were duly endorsed and were delivered to the sheriff on or about the date thereof to be executed in the due form of law; and your orator further shows
212 that the said sheriff of said county, on or about the 29th day of June, A. D. 1882, made return on said writs to him in that behalf directed and delivered as aforesaid that no property being found in his county whereon to levy said writs returned the same no part satisfied, as by said writs of *fieri facias* and the directions and return thereon endorsed, now on file in the office of the clerk of said court, will more fully appear, and to which or to a copy whereof your orator prays leave to refer.

And your orator further shows that the said judgments still remain in full force and effect, not reversed or satisfied or otherwise vacated, and that the said Alexander White has not paid the same to your orator, but has hitherto wholly neglected and refused so to do; that there is now actually and equitably due to your orator upon the aforesaid two judgments the full amount thereof, with interest and subsequent costs, over and above all claims of said defendants by the way of set-off or otherwise.

And your orator further represents that of these two judgments he caused or had proof to be made on the hearing of the
213 original suit; and caused, furthermore, it to appear by proper evidence in that behalf that the written indebtedness on which said judgments were entered and recovered at law antedated the time of the alleged fraudulent conveyances, transfers, and judgment by Alexander White to his relatives which are complained of in the original bill, and that all and singular said proof was then and there received without objection, as will more fully appear from the written testimony and depositions on file and of record at pages 139 and 140 of the printed case, and that all the facts, law and equity, which apply to the said judgments described in the original bill are equally applicable to the latter judgments described in this amendment.

Your orator prays that he may have the relief, with respect to the said several judgments described in this amendment, to which he is entitled, and for which he prayed relief, as to said judgments described in the said original bill, and otherwise as the nature and equity of his case shall require and as shall be agreeable to equity and good conscience.

And your orator will ever pray, &c.

214 F. W. COTZHAUSEN,
By A. B. BALDWIN,
His Solicitor.

A. B. BALDWIN,
Compl't's Sol'r.

Endorsed: Filed March 16, '85. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the ninth day of April, 1885, came Mary S. White, Elsie White, Annie C. White, James B. White, and Ann White, by their solicitor, and filed in said clerk's office their answer to the amended bill in said entitled cause, which said answer is in the words and figures following, to wit:

215 *Answer.*

United States Circuit Court for the Northern District of Illinois.

FREDERICK W. COTZHAUSEN

vs.

ALEXANDER WHITE, MARY S. WHITE, ELSIE WHITE, ANNIE C. WHITE, JAMES B. WHITE, MARGARET WHITE, and ANN WHITE.

The joint and several answers of Mary S. White, Elsie White, Annie C. White, James B. White, and Ann White, defendants, to the amended bill of complaint of Frederick W. Cotzhausen, amended by leave of court.

These defendants, saving to themselves all benefit of exception that can or may be had or taken to said amended bill of complaint for the many errors, uncertainties, and imperfections therein contained, for answer thereto or to so much thereof as these defendants are advised it is material for them to make answer to, answering, say that whether or not said complainant did in fact recover
216 against said Alexander White the two additional judgments in said amended bill mentioned and set forth, to wit, one on the 23rd day of March, 1882, for $4,289.33 damages and costs, and another on the 25th day of March, 1882, for $4,555.99 and costs, these defendants have no knowledge or information except that in said amended bill of complaint contained, and they neither admit nor deny the same, but leave said complainant to make such proof thereof as he may deem proper.

And these defendants further say that in addition to the sum of money found due and owing from said defendant, Alexander White, to his said mother, brothers, and sisters on an accounting had in the month of July, 1879, mentioned in the original answers of these defendants to the original bill of complaint filed herein, to which answers reference is here made, there was due and owing from said Alexander White to these defendants at the date of the several conveyances and transfers of land and other property made by said
217 defendant, Alexander White, to these defendants, as also set forth in said answers, other large sums of money for rents before that time collected and received by said Alexander White on real estate inherited by these defendants from said Alexander White, deceased, and for money received by him from the sale of personal property, also inherited by these defendants from said Alexander White, deceased, amounting to at least the sum of one hundred and eighteen thousand six hundred and thirty-seven dollars ($118,637.00), less only said Alexander White's portion thereof as coheir with

these defendants; which said indebtedness formed a part of the consideration of said conveyances and transfers of land and personal property to these defendants, as aforesaid, and that on the execution of said conveyances and transfers these defendants, in consideration thereof, gave to said defendant, Alexander White, their several receipts in writing in full of all claims and demands whatsoever due from him to them.

And these defendants further aver that the amount of the
218 indebtedness of said defendant, Alexander White, to these defendants exceeded the amount of the value of the real and personal property conveyed and transferred to these defendants as aforesaid at the time said transfers and conveyances were made.

And these defendants aver that said conveyances and transfers were made in payment of all said indebtedness of said defendant, Alexander White, to these defendants, and in discharge and satisfaction thereof, and for no other purpose; that the accounting referred to in said original answers, by which there was found due and owing from said defendant, Alexander White, to his mother, brother, and sisters the sum of one hundred and twenty-nine thousand dollars ($129,000.00), less his share thereof as coheir, embraced and included only the sums of money for which he was indebted as the administrator of the estate of his said father, and did not embrace or include the said sum of one hundred and eighteen thousand six hundred and thirty-seven dollars ($118,637.00) received and
219 collected by him, as aforesaid, for rents and for personal property sold by him as aforesaid, nor any part or portion thereof, as is fully shown by the proofs already taken in this cause.

All which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and they humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

ANN WHITE,
By JOSEPH N. BARKER, *Her Sol'c.*
JAMES B. WHITE,
By J. N. BARKER, *His Sol'c.*
ELSIE WHITE,
By J. N. BARKER, *Her Sol'c.*
MARY S. WHITE,
By J. N. BARKER, *Her Sol'c.*
ANNIE C. WHITE,
By J. N. BARKER, *Her Sol'c.*

JOSEPH N. BARKER, *Sol'c. for said Def'ts.*
IRA W. BUELL, *Of Counsel.*

Endorsed: Filed April 9, 1885. Wm. H. Bradley, cl'k.

On the same day, to wit, on the ninth day of April, in the adjourned March term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

220 FREDERICK W. COTZHAUSEN
v.
ALEXANDER WHITE, MARY S. WHITE, ELSIE WHITE, Annie C. White, James B. White, Margaret White, and Ann White. } In Chancery.

It appearing to the court that said complainant hath filed an amendment to his original bill herein filed under leave of court granted herein on the 28th day of February, 1885, so as to conform the pleadings with the proof introduced on the hearing, to take the place of his supplemental bill heretofore filed, and the court having duly considered the arguments of counsel heretofore made and the evidence heretofore introduced, upon due consideration thereof it is ordered, adjudged, and decreed as follows, namely:

221 1. That there is due and owing up to the date hereof, viz., the ninth day of April, A. D. 1885, to the complainant herein from the judgment debtor, Alexander White, on account of the two several judgments referred to in the complainant's original bill (recovered under dates of January 11, 1881, and March 9th, 1882, respectively), the sum of seventeen thousand three hundred and eighty-five dollars and seventy-nine cents ($17,385.79) for principal and interest; that, as appears by the evidence, the complainant recovered two further and additional judgments against said Alexander White at law on written contract, the date and original indebtedness whereof antecedes the fraudulent conveyances herein complained of, and which in justice and equity ought also to be provided for in doing complete justice between the parties and in granting final relief herein, on account of which last-mentioned two judgments there is due and owing on the date hereof to the complainant from said Alexander White the further sum of ten thousand four hundred and fifty-seven dollars and forty-three

222 cents ($10,457.43) for principal and interest; that the aggregate of said four judgments and record indebtedness due and owing from the said Alexander White to the complainant herein amounts at the date hereof aforesaid to twenty-seven thousand eight hundred and forty-three dollars and twenty-two cents ($27,842.22) for principal and interest.

2. That the conveyance dated the sixteenth day of July, A. D. 1879, executed by Alexander White to Elsie White, Mary S. White, Annie C. White, and James B. White, for a pretended consideration of fifty-six thousand eight hundred and fifty-nine dollars and twenty cents ($56,859.20), recorded on the 17th day of July, 1879, in the office of the recorder of deeds of Cook county, Illinois, in volume 890 of records, at page 421, and that the certain other conveyance, bearing even date therewith, executed by said Alexander White to Margaret White, for a pre*n*ted consideration of fourteen thousand two hundred and fourteen dollars and eighty cents (14,214.80), recorded on the 17th day of July, 1879, in the office of the

223 recorder of deeds of Cook county, Illinois, in volume 905 of records, at page 47, were made without adequate considera-

tion and with intent to hinder, delay, and defraud the complainant in this suit, a creditor as aforesaid.

3. That that certain bill of sale made, executed, and delivered by said Alexander White on or about the 18th day of July, 1879, to Ann White, Elsie White, Mary S. White, Annie C. White, and James B. White, defendants herein, of certain oil paintings and pictures, therein named and hereinafter described, was made without adequate consideration and with intent to hinder, delay, and defraud said complainant, a creditor as aforesaid.

4. That that certain judgment entered in the circuit court of Cook county by Ann White against Alexander White on or about the 4th day of September, 1879, by virtue of a note and warrant of attorney to confess judgment, under date of July 21, 1879, for forty-three thousand eight hundred and seven dollars and fifty cents ($43,807.50), and the accompanying conveyance and transfer,
224 as collateral security thereto, of certain personal and real property, hereinafter described, to which reference is also made at length in the answer of Ann White, were all and singular made and confessed without adequate consideration and with intent to hinder, delay, and defraud the said complainant, a creditor as aforesaid.

5. That said several conveyances, assignments, transfers, and judgment be, and they are hereby, set aside and declared void as against this complainant; that the several judgments recovered at law as aforesaid be, and the same hereby are, adjudged to be a lien upon the real estate so conveyed from the day of their entry of record, and that the complainant is also entitled to and has a lien on all the property of every description belonging to said judgment debtor, Alexander White, and upon all that was transferred or assigned by said Alexander White to the defendants, Ann White, Elsie White, Mary S. White, Annie C. White, Margaret White, and James B. White, as aforesaid, and upon the rents, issues, and profits of
225 the same and the proceeds thereof, if heretofore any of the property so conveyed and transferred to his said relatives has been disposed of or converted by them or either of them, so far as may be necessary to satisfy the complainant's aforesaid demand, with interest & costs.

6. That the complainants recover of the defendants, Alexander White, Elsie White, Mary S. White, Annie C. White, Margaret White, James B. White, and Ann White, his costs and expenses of suit, taxed at five hundred and twelve dollars and forty-six cents.

7. That the defendants be, and they are hereby, allowed sixty days from the date of this decree within which to pay into court for use of the complainant the amount hereby adjudged to be due him, with costs of suit and legal interest thereupon, and that in default of so doing the said lots and premises hereinafter described and so much thereof as may be necessary to satisfy the amount due be sold at public auction to the highest bidder for cash by John O. Bennett, master in chancery of this court.

And it is further ordered that he make such sale at the
226 Adams street entrance of the United States custom-house

building, in the city of Chicago, in the county of Cook and State of Illinois, and that he give public notice of the time and place of holding such sale by publishing an advertisement thereof once a week for three successive weeks in a newspaper published in the city of Chicago, in said county of Cook and State of Illinois, the first publication of such notice being not less than twenty-one days previous to the time of such sale; that at such sale the complainant may be the purchaser; that the said master shall give to any purchaser at such sale a certificate of sale in pursuance of the laws of the State of Illinois concerning the sale of real estate upon decrees in chancery, and shall cause a duplicate of such certificate to be recorded, as required by law.

The premises now authorized to be sold under and by virtue of this decree are the following, to wit: All the certain lots, pieces, or parcels of land situate, lying, and being in said district, in the county of Cook and State of Illinois, known and described as
227 sublot two (2) of lot four (4), in block thirty-three (33), in the original town of Chicago; also the south seventeen (17) feet of lot twenty-seven (27) and all of lots thirty (30), thirty-one (31), thirty-four (34), thirty-five (35), thirty-eight (38), thirty-nine (39), forty-two (42), and forty-three (43), in blocks forty-six (46), forty-seven (47), and fifty-eight (58), in the canal trustees' subdivision of the west half ($\frac{1}{2}$) of section twenty-seven (27), township thirty-nine (39) north, of range fourteen (14) east, of the third principal meridian; also lots one (1), two (2) of sublot five (5) of lot four (4) of block thirty-three (33), in the original town of Chicago; the north ten (10) acres of the south twenty (20) acres of the southeast quarter ($\frac{1}{4}$) of the northeast quarter ($\frac{1}{4}$) of section seventeen (17), in township thirty-eight (38) north, of range fourteen (14) east, of the third principal meridian; also lots three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), and eleven (11); on H. M. Thompson's subdivision of lots twenty (20), twenty-one (21), twenty-two (22), and twenty-three (23), in block twenty-four (24), in Elston's addition
228 to Chicago; also lots fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty (20), in block fourteen (14), and lots eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), and thirty-one (31), in block fifteen (15), and lots twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), and forty-five (45), in block sixteen (16), in Adam Smith's subdivision of the south half ($\frac{1}{2}$) of the north half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) and the southwest quarter ($\frac{1}{4}$) of the southwest quarter ($\frac{1}{4}$) of section thirty-six (36), in township thirty-nine (39) north, of range thirteen (13) east, of the third principal meridian; also lots forty-nine (49), fifty (50), fifty-one (51), fifty-two (52), and fifty-three (53) and the east eight (8) feet of lot fifty-four (54), in block sixty-one (61), of the canal trustees' subdivision of section seven (7), in township thirty-nine (39) north, of range fourteen (14) east, of the third (3d) principal meridian, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging.

It is further ordered that if the said premises or any parcel thereof shall at such sale be struck off and sold to the complainant in this cause he shall be required to pay to the master only so much of such bid as shall, taken together with other monies paid to the master at such sale on bids for parcels by other persons, if any there be, be sufficient to satisfy the expenses of the sale and the master's fees, disbursements, commissions, and expenses and the costs of this suit.

It is further ordered that said master make report to this court of such sale and of his acts and doings hereunder for approval and confirmation and for further direction herein, and that he retain from the monies received by him on said sale the amount of his fees, disbursements, commissions, and expenses thereon, and bring the residue of such monies, if any, into court to abide the further order of the court, and that he take the receipt of the clerk of this court therefor and file the same with said report, and if the price for which said premises shall be sold shall be insufficient to satisfy the amount so found and adjudged to be due to the complainant, with the interest thereon and the costs of suit and expenses of sale as aforesaid, that the said master specify the amount of such deficiency in his said report of sale.

And it is further ordered that the clerk of this court hold such monies so to be paid him by said master subject to the further order and direction of the court.

It is further ordered that if the land so sold shall not have been redeemed according to the laws of the State of Illinois within the time allowed by said laws the master in chancery of this court shall execute to the legal holder of any certificate of sale under this decree a deed of conveyance of the land in such certificate described.

And it is further ordered, adjudged, and decreed that, upon the execution and delivery of the deed or deeds of conveyance as aforesaid, the grantee or grantees, his or their heirs or assigns, be let into possession of the portion of said mortgaged premises so conveyed to him or them, and that any of the parties to this cause who may be in possession of said premises or any part thereof, and any person who, since the commencement of this suit, shall have come into possession under them or either of them, on the service of a copy of said master's deed, surrender possession thereof to such grantee or grantees, his or their heirs or assigns, and in default of so doing a writ of assistance may issue, in accordance with the practice of this court.

8. It is also adjudged and decreed that the complainant be at liberty to apply to this court at any time, on proper cause being shown, for further directions upon the foot of this decree, and in particular for the appointment and assistance of a receiver with the usual powers and duties of such, and for the sale and disposition, in such manner as the court may hereafter direct, of the following property covered by the bill of sale hereinbefore referred to and assignment to Ann White as collateral security to her judgment, namely:

Paintings and pictures transferred to Ann White, Elsie White, Mary S. White, Annie C. White, Margaret White, and James B. White:

His undivided one-fifth interest in—
Faust and Marguerite, by Schaefels.
The Little Coquette, by Chaplin.
Reverie, by Aubert.
The Convalescent, by Herre.
Objects of Art, by Raszezowski.
The Jewels, by Taulmaure.
The Cock Fight, by Jerome.
Madonna & Child, by Muller.
Rainey Day in the Alps, by Rindler.
Sheep in a Snow Storm, by Schenck.
A New England Home, by Shaughnessy.
Coming Home, by Shaughnessy.
Azeleus, by Lambdin.
Two volumes of photographs.

Real and personal property transferred to Ann White as collateral security to judgment note:

1. A promissory note, dated June 12th, 1873, for $4,000,
233 made by R. Fowler (now deceased), payable sixty days after date thereof, and on which $2,000 remained unpaid when assigned.

2. A promissory note, dated July 6, 1875, for $60, made by C. F. Brothers, payable 90 days after the date thereof.

3. A promissory note, dated July 10th, 1875, for $150, made by John Taylor, payable on demand.

4. A due bill, dated July 19, 1875, for $200, made by John Reid, payable about 30 days after the date thereof.

5. A promissory note, dated September 4, 1875, for $1,727,94, made by John Reid, payable on demand.

6. A promissory note, dated October 1, 1875, for $300, made by Alexander Sullivan, payable one year after the date thereof.

7. A promissory note, dated February 1, 1876, for $25, made by W. H. Wilcox, payable on demand.

234 8. A promisssry note, dated March 7, 1876, for $75, made by H. G. Howe, payable one day after the date thereof.

9. A promissory note, dated August 8th, 1876, for $220, made by J. F. Gookins, payable 60 days after the date thereof.

10. A promissory note, dated March 1, 1877, for $454.35, made by S. B. Munson, Jr., payable one year after the date thereof.

11. A promissory note, dated March 8, 1877, for $125, made by C. E. & M. E. Quinlan, payable four months after the date thereof.

12. A promissory note, dated April 12, 1877, for $100, made by C. E. & M. E. Quinlan, payable ten days after the date thereof.

13. A promissory note, dated Sept. 1, 1877, for $5,000, made by the Jenison Heating and Ventilating Co., payable one year after the date thereof.

235 14. A promissory note, dated September 28, 1877, for $13.20, made by M. A. Wakefield, payable on demand.

15. A due bill, dated December 7th, 1877, for $458.73, made by S. B. Munson, Jr.

16. A due bill, dated May 15, 1878, for $484.30, made by S. B. Munson, Jr., on which $100 had been paid when assigned.

17. A due bill, dated July 26, 1875, for $50, made by the Jenison Heating and Ventilating Co.

18. A promissory note, dated December 20, 1878, for $1,500, made by S. B. Munson, Jr., payable 30 days after the date thereof.

19. A claim against the American Oleograph Co. of Wisconsin for about $5,000.

20. Certificate No. 438, dated December 8, 1879, for $1,419.25, of the receiver of the City National Bank of Chicago, on which $300 remains unpaid.

21. A claim against one Horace B. Fry.

236 22. A claim against Bauntze Brothers.

23. 150 shares of the capital stock of the American Oleograph Co. of Wisconsin.

24. 857 shares of the capital stock of the Jenison Heating and Ventilating Company of Illinois.

25. 223 shares of the capital stock of the Au Sable Quarry Company of Illinois.

26. Mortgage bonds of the par value of $1,800 of the Au Sable Quarry Company of Illinois.

27. Also lot ten (10), in block four (4), in Stone's subdivision of the north fifteen (15) acres of the west half of the southwest quarter of section thirty-four (34), town. thirty-nine (39). range fourteen (14), in Cook county, Illinois, which lot said Alexander White conveyed to Ann White, dated August 29, 1879.

And thereupon the defendants, by their solicitors, J. N. Barker and Ira W. Buell, pray an appeal from the foregoing decree,
237 which appeal is allowed upon the filing within sixty days of the date of the entry of this decree a bond in the sum of thirty-five thousand dollars, to be approved by the court, and which said bond shall operate as a supersed-as, the certificate of evidence to be filed within sixty days from this date.

238 On the hearing of said cause on the same day, to wit, the ninth day of April, 1885, the certificate of evidence in said

cause was filed in said clerk's office and is in the words and figures following, to wit:

Certificate of Evidence.

In the Circuit Court of the United States for the Northern District of Illinois.

FREDERICK W. COTZHAUSEN *vs.* ALEXANDER WHITE *et al.*

Bill and supplemental bill.

Be it remembered that on the hearing of the above cause the complainant gave in evidence as follows—that is to say, introduced Alexander White as a witness (one of the defendants), who testified as follows:

239 Depositions of Alexander White, taken, by consent of parties, before the undersigned notary, all formalities as to time and place and notice of taking the same or in returning said depositions being waived.

JUNE 21ST, 1882.

Complainant in person; defendants by J. N. Barker and Ira W. Buell.

ALEXANDER WHITE, being first duly sworn, on oath testified as follows:

I am the judgment debtor and one of the defendants in this suit. My age is thirty-three. I am a single man; have never been married. I reside in the city of Chicago, at number 2441 Wabash avenue, with my mother, Ann White, one of the defendants in this suit. Our whole family lives together. Our family consists of my mother, Ann White, my sisters, Margaret, Elsie, Mary S., Annie C., and James B. White, my brother. They are all of age; I am the oldest boy; can't tell the age of the oldest. Margaret White, the oldest, is about thirty-eight years old; James B. White is the youngest, and about 24 years of age. Neither one are married. My mother is the widow of Alexander White, deceased; he died about the 16th day of March, 1872, at Lake Forest, Illinois. My business is law; I was admitted to the bar about a year ago in the State of New York; I do not claim to be a member of the Chicago bar; I haven't had any occasion to make application for admission to the Chicago bar as yet. I am at present tending to the interests of my mother, sisters, and brother, together with my brother, for a living. That is all I am doing at present. Since being admitted to the bar in New York I have not devoted myself to anything else that I recall. They pay me no salary. My brother has immediate charge of the interests of his mother and sisters. He has no business trade or avocation outside of that, that I know of. My brother and I room together at present. My office is in the McCormick block in Chicago. I have a room in the same office with Mr. Barker. The estate of which I speak consists mostly of real estate in Cook county, Illinois. I did not speak of any estate before this; I spoke of their interests.

Q. Will you please explain to me what difference there is between estate and interests spoken of?

A. If the word estate in this connection means real estate and personal estate, I do not consider that there is any difference between that and interests.

Q. Will you please state why you discriminated before between these two terms, in your own mind?

A. I thought at first you had referred to my father's particular estate.

Q. Now, what are the interests or estate of your mother, sisters, and brother that you have spoken of in connection with your present employment?

A. There are various pieces of real estate situated in this county.

Q. Does it include the various pieces of real estate alleged in this bill to have been transferred by yourself to sisters and brother?

A. It does.

Q. Does the bill of complaint give a correct description and make reference to all the real estate which you transferred to your relatives in or about the months of July and August, 1879?

A. It does, with the exception of a few lots in Lake Forest. I think the descriptions are correct. The lots in Lake Forest were quitclaimed; I held the lots to three parties—S. B. Munson, Jr., Cragin, and Jennison; am not positively certain that they were all quitclaimed to Cragin & Jennison, separately, for shares of the capital stock of the Jennison Heating & Ventilating Company. I
240 exchanged this property for stock in that company; some of this stock, as I recall it, belonged to those individuals I have named. This was in the summer of 1879; it was about the time of the transfer to my mother, sisters, and brother; can't tell whether before or after; I have no memorandum; I think it was after; the deeds will show.

Q. Give me the value, as near as you can, of each tract of real estate described in the bill at the time when transferred by you, and again its value at the present time outside of improvements since made, if any.

A. Sublot 2, lot 4, & lots 1 & 2 of sublot 5 of sublot 5 of lot 4, bl'k 33, original town of Chicago; they form one continuous L shaped tract. It is improved at present, but was not at the time of the transfer. I understand it has been leased for a term of years. My idea is its value in the summer of 1879 — from $20,000 to $25,000. At present I couldn't say. I am not conversant with the values of real estate in this city; do not think it is worth $50,000; don't know what it is held at by the family or how it is estimated by them; don't know when it was let.

Q. Do you mean to be understood that you are utterly ignorant of its present value and couldn't form an estimate?

A. I don't say as I would say utterly ignorant, only that I am not conversant with the present values of real estate in this city.

Q. Is the property worth more or less than when you transferred it?

A. I think it is worth more.

Q. What percentage?

A. I think in the summer of '79 it was worth about $20,000; I think that perhaps now it may be worth $25,000.

Q. Has the property been offered by the family in the market; &, if so, at what figure?

A. It has not been offered that I know of. S. 17 ft. of lot 27, lots 30, 31, 34, 35, 38, 39, 42, & 43, in bl'ks 46, 47, & 58, in canal trustees' sub., W. ½, 27, 39, 14; in the summer of 1879 its value was from $90 to $100 per foot.

Q. Figure it up for us in the aggregate.

A. About $18,000 to $20,000.

Q. What is the present value aside from improvements?

A. $130 to $140 per foot, or about $26,000. N. 10 acres of S. 20 acres of S. E. ¼ of N. E. ¼, 17, 38, 14, town of Lake; I think its value in 1879, as I remember, was about $350 per acre, making $3,500 in value in aggregate; its present value is about $700 per acre, or $7,000. Lots 3, 4, 5, 6, 7, 8, 9, 10, & 11, in Thompson's subdivision of lots 20, 21, 22, & 23, in bl'k 24, in Elston's add. to Chicago—nine lots; 6 are 24 ft. & 3 25 ft.; aggregated value between three & four thousand dollars ($15 to $18 per foot); can't say present value, as am not acquainted with property in that vicinity. Lots 15, 16, 17, 18. 19, & 20, in bl'k 14; lots 11, 12, 13, 14, 15, 16, 17, 25, 26, 27, 28, 29, 30, 31, in bl'k 15; also lots 28, 29, 30, 31, & 45, in bl'k 16, in Adam Smith's subdivision of S. ½ of N. ½ of S. W. ¼ of sec. 36, 39, 13—25 lots—in summer of 1879 were worth $100 per lot; do not think property has risen any in value in that section; am not sufficiently acquainted. Lots 49, 50, 51, 52, 53, & E. 18 ft. of lot 54, in bl'k 61, in canal trustees' subdivis., sec. 7, 39, 14; worth in 1879 from $80 to $85 per foot; total, $11,000 to $12,000; present value, about $100 per foot; total, about $14,000.

Q. Have you at present any property, real or personal, standing in your name or held in secret trust for you?

241 A. No, sir; none whatever.

Q. Do you mean to be understood that you have nothing at all outside of your clothing?

A. Nothing whatever.

Q. Do you keep any horses?

A. No, sir.

Q. No dogs?

A. No, sir.

Q. Any diamond or gold watch?

A. I have a gold watch, but no diamond.

Q. Produce your watch. (Show it.)

A. It is not running; out of order.

Q. Have you any library?

A. I have a few law books.

Q. No library outside?

A. No, sir.

Q. Have you any notes or accounts outstanding?

A. No, sir.

Q. Have you had or accumulated in any way or manner any property, real or personal, since you sold out in the summer of 1879?

A. Some mining stocks that I consider valueless.

Q. Explain.

A. Nothing else that I recall.

Q. Where did you get these mining stocks & what for?

A. In New York city, for negotiating loans.

Q. How much have you earned in cash or other valuables since the summer of 1879?

A. I don't know that I have earned anything in cash or valuables since summer of 1879.

Q. What have you lived on?

A. The money given me by my relatives in Chicago—my mother, my sisters, & brother.

Q. How much have they given you?

A. About $2,000.

Q. In what form?

A. In money. I gave them no receipt. I received nothing from my mother in particular. I received it from all of them, as a whole. My brother gave it to me—part of it in Chicago & part in New York city, where I was attending the law school; it was given to me in cash.

Q. Has any money ever been sent to you by your relatives from here?

A. Part of this $2,000 was sent to me while I was in New York attending law school.

Q. In what manner and at what time?

A. Sometimes in cash; sometimes by P. O. order; sometimes by draft on New York.

Q. Under what name and address?

A. To Alexander White; while in New York city, to New York city.

Q. Did you visit any watering places or places of summer resort while in New York city pursuing your studies or during your vacation?

A. I do not recall where I was during the summer of 1880; think, however, I came on and spent the summer in Chicago.

Q. Did you spend the greater part of the year 1879 in New York?

A. I was attending the law school in New York during the months of Oct., Nov., & Dec., 1879.

Q. Did you spend most of your time East from Dec., 1878, until May, 1879?

A. I hardly think half of my time; was back and forth.

Q. By how many different names did you go while East?

242 A. I went under no other name than Alexander White.

Q. Did you send telegrams under assumed names?

Objected to as immaterial by Barker.

A. I don't recollect that I did.

Q. Did you for a time use the name of W. Murphy in telegraphing to intimate friends?

Same objection.

A. Not that I recollect.

Q. Would you not likely recollect the fact when you had assumed names not properly your own?

A. I should think so.

Q. Is this telegram now shown to you and signed William Murphy one that you sent (marked Exhibit I)?

Same objection.

A. I do not remember of sending this telegram.

Q. Is that a telegram which you sent (marked Exhibit 2)?

A. I do not recollect sending that particular telegram, although it is very likely that I did.

Q. Were not these two telegrams sent to the same address by the same writer?

A. They read as sent to the same address; one signed by William Murphy and one signed by A. White. I do not remember positively of sending either of them.

Q. (Question repeated with additional remark.) I want you to state on your oath whether those two telegrams were sent by the same writer, and not whether they bear the same name?

A. I can't state positively.

Q. State as well as you can, if not positively, to the best of your recollection.

A. The Buffalo telegram may have been sent by me. I do not remember of sending the one signed William Murphy. I recall now that Mr. Guyton, to whom this telegram signed William Murphy is addressed, wrote to me about sending telegrams by another name than my own, as he did not desire Milwaukee parties to know that I was at all connected with the American Oleograph Co. I do not remember now what the exact name he chose to telegraph me in. It may have been William Murphy. I think there was more than one name used in the various telegrams sent by myself, although positively I do not remember of sending any telegrams in the name of William Murphy. I recall the above from the questions as put to me.

Q. Give us the other aliases or fictitious names which you used about this time and which you refer to above?

Objected to by Barker.

A. I do not remember positively that I used the name of William Murphy, or any other assumed name. I only remember that Mr. Guyton suggested certain names which I do not remember.

Q. Did you act upon Mr. Guyton's suggestion in adopting said different aliases?

A. I do not recollect positively that I did, although it is very likely that I did so.

Q. What reason?

Objected to by Barker — immaterial.

A. If I did it at all it was at Mr. Guyton's suggestion, for the reason stated by Mr. Guyton, given by me in a former answer.

Q. What was it?

A. As I recollect it, Mr. Guyton did not desire parties in Milwaukee to know that I had anything to do with the American Oleograph Co.

Q. What was the reason of concealing the fact that you were connected with the American Oleograph Co.?

243 A. I don't recall any particular reason now except that he desired to be the party known in the American Oleograph Co.'s affairs and the only party.

Q. What was your connection with or relation to that company at that time?

Objected to by Buell as immaterial.

A. I do not now recall my relations to the company at that time.

Q. Will you please refresh your recollection by the text of the telegrams shown you and mature reflection?

A. I can't do it.

Q. Had yourself and Mr. Guyton become interested within a month or two theretofore in said company by the purchase of a majority of its capital stock from Mr. Cotzhausen?

A. I could tell better if I could refer to some memorandum that I have. I did some time in the fore part of 1878. I do not find the memorandum that will enable me to fix the time.

Q. What was the agreement between yourself and Guyton in relation to said stock?

Objected to by Buell.

A. The first arrangement was that I was to guarantee certain notes made by him (B. F. Guyton) to be used in the purchase of the capital stock of the American Oleograph Company; he to sign a lease of a part of the building known as number 85 5th Ave., Chicago, and pay rent for the same. He was to pay $5,000 cash to Mr. Cotzhausen, the owner of the stock, and the balance of the purchase-money in his notes guaranteed by me. The effects of the American Oleograph Co. were to be moved from Milwaukee to Chicago, into this building, and Guyton was to become a tenant. He was to assign to me the capital stock of the American O. Co. as collateral security on these notes to indemnify me for my guarantee. Mr. Guyton was unable to pay this cash payment of $5,000 to Mr. Cotzhausen; then I took Mr. Guyton's place and assumed the payment of the $5,000 and paid him the same, with interest.

Q. Is the letter now shown you the one which you gave to Mr. Guyton for Mr. Cotzhausen's use and perusal when you proposed to join in the purchase of the stock when it was proposed to purchase the stock?

(Letter offered in evidence, marked Exhibit 3.)

Objected to by B. & B.

A. I wrote this particular letter to Mr. Guyton. I understood from Mr. Guyton that Mr. Cotzhausen desired references as to my financial standing, which I furnished by this letter.

Q. Were the various statements in that letter true and in accordance with the existing condition of things?

Objected to by B. & B.

A. I think they were.

Q. What was the total amount of your indebtedness on or about this time, including the guarantee of these notes?

A. About $100,000.

Q. Was the whole of that due?

A. All of it was due outside of the notes to Mr. Cotzhausen.

Q. Will you please specify what that indebtedness consisted of?

A. $15,000 to Cotzhausen; the balance to my mother & sisters & brother.

Q. Any one else?

A. No; except to Mr. Barker. There was due Mr. Barker about $1,000.

Q. This indebtedness of $15,000 to Cotzhausen was contracted in February, 1878, was it not?

A. About that time, and part of it has gone into the judgment on which this suit was brought.

Q. Do you recollect the time when yourself & Guyton, in the beginning of 1878, came to Mr. Cotzhausen's office and offered
244 to me these notes in purchase of stock?

Objected as immaterial by B. & B.

A. I do not.

Q. Do you recollect that you came there with Guyton after the notes were executed and just preliminary to the purchase?

Objected.

A. I do not recollect the time.

Q. What did you call on me for?

Objected.

A. I remember once going to Milwaukee to inspect the property of the American Oleograph Co.; I think Guyton was with me. I called on you at that time.

Q. Who was the first party in moving for this purchase or sale?

Objected.

A. Either Mr. Frank Kerting or Mr. B. F. Guyton, of Chicago.

Q. The property had never been offered for sale until these parties called upon Mr. Cotzhausen for it, had it?

Objected to by B. & B. as immaterial.

A. I couldn't say.

Q. Did you have an understanding with Guyton as early as the month of December previous that that business should be bought and eventually moved to Chicago?

Objected to by B. & B. as immaterial.

A. Not that I recollect.

Q. When did you first settle upon the idea of interesting yourself in the purchase of that business with a view of eventually moving it to Chicago?

Same objection.

A. I think it was in the spring of 1878.

Q. Did you tell me at the interview in Milwaukee just preliminary to the purchase, that such was your object?

Same objection.

A. Not that I recollect.

Q. Did you tell me at that interview who you were?

Same objection.

A. I presume I told you my name.

Q. Did you tell me at that time that you were the administrator of the estate of your deceased father?

Same objection.

A. I do not remember of telling you of that fact.

Q. Did you at that time tell me that you could pay cash for the whole amount, but that it was a maxim of the family and yourself, impressed upon you by your father, never to encumber or mortgage any portion of the estate?

Objected to as leading & immaterial.

A. I do not remember of making any such statements.

Q. Did you at that time tell me that your main object was to get your brother Jimmie into some regular business or employment, and that was one of the reasons for your interesting yourself in this purchase?

Same objection.

A. I don't remember of making any such statements to Mr. Cotzhausen.

Q. Did you at that time state to me that the estate had a valuable building on 5th Ave. which you intended to improve by steam elevators and otherwise with a view of securing a permanent tenant in connection with this lithograph business?

Objected to by def'ts' att'ys.

A. I do not recollect making any such statements to Mr. Cotzhausen.

Q. Did you make any such statements, or substantially to that effect, at or about this time to Mr. Guyton, Thurber, Kertz, or others? I now refer to the four previous questions.

245 Same objections.

A. I remember speaking to Mr. Guyton and my mother as to the two latter statements, but I do not remember of doing so at this par-

ticular time. I have doubtless told persons that I was the administrator, but do not remember stating it to any person in particular. I never remember of stating such a maxim to any one.

Q. What did you say to Mr. Guyton in relation to the subject-matter of these inquiries?

Same objection.

A. As I remember, I made him agree to lease part of this 5th Ave. building. I spoke to Guyton about the improvements which I contemplated in the building. I told him that one of my objects was to secure a permanent tenant for the building, which was in the name of the estate at that time. I think I also spoke to him of giving my brother James a position in the company. I told him that my brother was not engaged at that time in any business, and thought we would give him something to do. My brother was about 20 years of age at that time, I think.

Q. What caused you to entertain this tender consideration for James?

Same objection.

A. On account of our relationship.

Q. Did you consider it your duty as administrator and managing agent of the estate to secure him some permanent employment?

Same objection.

A. I did not.

Q. Did you talk to Jimmie and your mother about it?

A. I remember speaking to my mother about it, but am not positive whether I spoke to my brother or not.

Q. What did you say to your mother about it?

Same objection.

A. I said that I thought that an excellent business opening was offered me for my brother Jim and a good tenant for the 5th Ave. building.

Q. Did you explain to her in what particulars?

Same objection.

A. I explained to her these particulars.

Q. Who was present?

Same objection.

A. I think she was alone; my brother may have been present; think none of my sisters.

Q. What did your mother say in response?

Same objection.

A. She said that she would have nothing to do with the matter and told me to have nothing to do with the matter, meaning by matter the purchase of this particular property.

Q. Did she tell you not to avail yourself of the excellent business opening which was offered for your brother James?

Same objection.

A. She did, and very emphatically, too.

Q. Did she tell you not to avail yourself of the excellent opportunity which was offered you to secure a good tenant for the 5th Ave. building?

Same objection.

A. She did, and very emphatically.

Q. Had you been in the habit, as administrator of the estate, to confer with your mother about such matters of business?

Same objection.

A. This was the second, if not the first, time that I ever so consulted with her.

Q. Why was that?

Same objection.

A. Because I considered myself fully competent to attend to such matters myself.

Q. Do you mean to say that your mother had never before interfered in such matters and your management of the estate?

Same objection.

A. Never before.

Q. Or your brother or sisters?

Same objection.

246 A. None of them ever—never.

Q. Why was this?

Same obj.

A. I could not say.

Q. Give us some reason.

Same obj.

A. I know of no other than that they thought I was managing the estate for their best interests.

Q. Were you all living together at the time, in the same house and family, prior to Febr'y, 1878?

Same obj.

A. Not all together; some of the members of the family spent the winter in the South. They remained and constituted one family, residing at Chicago and Lake Forest, Ill.

Q. Did you tell Guyton that the reason for not raising the whole amount of the purchase-money in cash was that you did not want to encumber or mortgage the estate, or words to that effect?

Same objection.

A. I do not recollect of making such a statement to Mr. Guyton.

Q. You are aware that at first it was agreed to pay the whole $20,000 in cash, were you not?

Same obj.

A. I am not aware.

Q. Was it not you that came to Milwaukee and persuaded me to extend a credit on $15,000 for one, two, and three years, you offering to guarantee the notes?

Same objection.

A. I think not.

Q. Do you mean to swear that you did not?

Same obj.

A. I am not certain, but I do not remember that that was the fact.

Q. Did you not tell me at or about this time, when you came to Milwaukee with Guyton about this purchase, that the ready means of the estate which you had on hand would be necessary to put the building in proper condition and provide a working capital for the business, or words substantially to that effect?

Same obj.

A. I do not recollect.

Q. Do you recollect that you enquired of me at length what working capital would be required?

Same obj.

A. It seems to me that I asked you the cash necessary for a working capital.

Q. Did you get all the necessary information you wanted?

Same obj.

A. As I remember he stated $5,000 as sufficient cash capital.

Q. Did I give yourself and Guyton, by letter to the company, an introduction and insight into the business, the records, and books of the company?

Same obj.

A. I am quite confident you did not.

Q. Since you do not recollect in response to most of my inquiries above made, will you please now state what caused me the pleasure of your repeated calls at Milwaukee and what took place preliminary to the purchase?

Same obj.

A. It would be very difficult for me now, over four years since I saw Mr. Cotzhausen at Milwaukee, to state at length or in detail our conversations together, as I remember my first visit was to inspect the property of the company (American O. Co.). I think Mr. Guyton accompanied me. Mr. Thurber, the secretary of the company, before permitting us to look around the company's shop, desired us first to obtain permission of Mr. Cotzhausen. We then called on you personally. After a few words of greeting, Mr. Guyton and I returned to the company's shops and told Mr. Thurber that we had seen Mr. Cotzhausen, and that he had no objections to us inspecting the same;

so we looked over the machinery and other effects belonging to the company. My impression is that the terms of the purchase were made by Mr. Guyton with Mr. Cotzhausen. Mr. Cotzhausen
247 began to tell me about himself; about how many years he had been an attorney in Milwaukee; about how he came to be the owner of the American Oleograph Co.'s stock; about how the business was all run down when he took possession; about how he had placed it on a good financial basis, and about its good commercial standing in general; that his business was the law, and that he did not care to run a lithographing concern; that therefore he was willing to dispose of it.

Q. Now, since you have told us at great length what I said to you, although it is four years ago, will you now please to recollect and tell us the substance of what you said to me?

Same obj.

A. As I remember, I said very little, Mr. Cotzhausen doing most of the talking.

Q. Will you please tell us what you do recollect as having been said by yourself and nothing beyond that; what caused me the pleasure of your call and what you said?

Same obj.

A. I remember of asking him the terms on which he would dispose of the oleograph Co.'s stock. We talked together for some time on that subject. I do not remember the terms he then gave, but remember that I thought them too high and told him so. I told him also that the interest was too high; that the cash payment was too high; that the deferred payments were too long, and finally we talked upon the deferred subject of the purchase price. I think that the final negotiations were concluded by Mr. Guyton, and I think by more or less correspondence.

Q. What interest did you have in coming to see me and in inspecting the property and in negotiating terms of sale?

Same obj.

A. My desire was to make as favorable terms as possible with Mr. Cotzhausen for Mr. Guyton, and also because I was to guarantee the deferred payments.

JUNE 22ND.

Continued.

Same counsel present.

Q. Do you mean to say, Mr. White, that you had no other and further interest in the proposed purchase of stock except finding a tenant for the building and a position for your brother James?

Same objection.

A. Not at that time.

Q. Now, please explain how matters subsequently developed and how you became further interested.

Same objection.

A. Mr. Guyton had agreed, together with one Chauncey T. Bowen, then of New York, to raise $5,000 cash, being the first installment of purchase-money. Mr. Bowen also assured me at this time that that amount would be raised beyond a doubt. He was glad that a business opportunity had been thus afforded to Mr. Guyton. Mr. Guyton had been Mr. Bowen's book-keeper for a number of years when Mr. Bowen was in commercial business in Chicago, and subsequently his private secretary. Mr. Guyton failed to raise the $5,000. The American Oleograph Co.'s property in Milwaukee was in consequence attached. I, therefore, to save Mr. Guyton's interest and to protect myself as guarantee of the notes, stepped into his place and made arrangements with Mr. Cotzhausen to pay the $5,000, which I did pay in full and with interest, together with certain notes of the company. Some notes of the company I think I assumed. I then made arrangements with Mr. Cotzhausen to move the business to Chicago. The business was finally moved to Chicago about the fall of 1878, into the building on 5th ave. Mr. Louis Kertz continued president and E. C. Thurber as secretary and treasurer, this being one of the conditions made by Mr. Cotzhausen in the sale of the stock. Mr. Guyton's stock continued in his name.

248 Q. What was your position in the company?

Same obj.

A. I had no position in the company.

Q. How much of the $20,000 stock that stood in the name of Guyton did you own?

Same obj.

A. I considered that I owned it all at this time and after Mr. Guyton failed to raise the $5,000 cash.

Q. For what reason did you so consider it?

Same obj.

A. Because I took his exact place in the purchase at this time.

Q. Did you not obtain an assignment of the stock from Mr. Guyton from the very first, although the same was never recorded nor the stocks transferred upon the books of the company?

Same objection.

A. I think not from the very first, although I may have required it from the very first, but soon after.

Q. When did your brother James first enter the business of the lithograph company at Milwaukee?

Same objection.

A. I do not think he ever did.

Q. When did you first send him to Milwaukee in connection with this lithograph business?

Same objection.

A. I think about July, 1878.

Q. What for?

Same objection.

A. To see how he would like such a business.

Q. How long did he stay there at Milwaukee?

Same objection.

A. I think on his first visit about a week; he returned, saying he did not think much of the business, and that he didn't see that there was very much for him to do there. At my earnest solicitation to try it again, he reluctantly consented to return to Milwaukee and remained, I think, two months—from between the latter part of July to the time the company moved to Chicago.

Q. Did you request Mr. Thurber to give Jim his personal attention in teaching him the business, as Jim was anxious and willing and only needed encouragement and patience?

Same objection.

A. I think very likely I did.

Q. Did you write a letter to that effect?

Same objection.

A. I do not remember of doing so, though I think that I spoke to him personally about it.

Q. Were such statements by you made in accordance with the existing state of things at the time?

Same objection.

A. I do not think really that Jim was particularly anxious, although I think he was willing to see how he would like the business.

Q. Did you direct Mr. Thurber to give from the business to your brother Jim such moneys as Jim might want for personal use, and did Mr. Thurber do so accordingly?

Same objection.

A. I think I requested Mr. Thurber to pay his board bill and nothing more.

Q. How much money did Jim get on that account out of the business?

Same objection.

A. I haven't the least idea.

Q. Did you at this time act and conduct yourself as the principal proprietor of the business?

Same objection.

A. Only so far as the officers of the company were concerned.

Q. Do you mean to be understood that as to others and the world at large it was kept secret that you were interested, or what is it?

249 Same objection.

A. I so desired it.

Q. Why?

Same objection.

A. I did not care to have it generally known that I had anything to do with the concern.

Q. When did you commence to fit up the building on 5th Ave. for purposes of this lithograph business and put in boiler, elevator, &c?

Same objection.

A. I think the latter part of the summer of 1878 or the fore part of the fall of 1878.

Q. How much did it cost to so fit up that building?

Same objection.

A. Perhaps $2,500 to $3,000. The boiler, engine, and setting same—say $2,000; elevator and attachments—say $1,000. In addition, shafting on 5th floor of building to be occupied by American Oleograph Company, costing about $500 or $600, together with carpenter's work on said floor, costing, perhaps, $200.

Q. Was Mr. Guyton at this time still interested in the business?

Same objection.

A. He was not.

Q. When did Mr. Guyton cease to be interested?

Same objection.

A. I think the early part of the summer of 1879. His interest was first brought to an end by Mr. Cotzhausen saying he would have nothing more to do with Mr. Guyton, as he, Guyton, had not kept his promises as to the payment of the $5,000 cash. It was at this time that I took Mr. Guyton's place, assuming all his obligations to Mr. Cotzhausen.

Q. Did you and Guyton adjust your matters between you, or did you kick him out or otherwise dispose of his interest in the stock and business?

Same objection.

A. We adjusted our differences, I assuming all his obligations he had made with Mr. Cotzhausen and assuming the payment of moneys sent him by Mr. Bowen from New York.

Q. Had Guyton put any money into the business; and, if so, did you pay that back to him?

Same objection.

A. He did; I did not pay him back, but assumed to do so.

Q. How much property did you own in your own right in February, 1878, about the time when this purchase was made?

A. One-sixth interest in the estate of my father, less the dower interest of my mother; also the following-described real estate situated in Cook county, Illinois: The south 20 acres of W. ½, S. E. ¼, sec. 30, 39, 13, valued at about $11,000, subject to one incumbrance of $20,000; the legal title is held by me also. The E. ½ of S. E. ¼ sec. 22, 38, 13, valued at about $35,000, subject to one incumbrance of

$20,000; the legal title was held by Sylvester Lind. Both the above two mortgages have been since foreclosed in chancery. Also lot 10, bl'k 4, in Stone's subdivision; north 16 acres, W. ½, S. W. ¼, sec. 34, 39, 14, worth about $1,250; also the undivided half of bl'k 4, of Jefferson, valued at about $500; also an unrecorded quitclaim deed of the un. half of the north 120 acres of E. ½ of sec. 19, 32, 9, situated in Will county, Ill. This deed is still unrecorded, as title of same is deemed doubtful—valueless by reason of defect in title, a tax title, as I remember.

Q. Where is the deed?

A. I turned it over to my mother; no, I think I have it. (NOTE.—Bring deed into court at adjournment.) I believe this constitutes all the real estate I then had.

250 Q. Please examine your answer and inform us whether, on subsequent reflection, anything is to be added to the list of personal property which is therein set forth.

Objected to because the question intimates that the witness has declined to give list of personal property, which has not been the case.

A. I was about to list the personal property when the above question was asked. There is a note of $6,720 made by Benjamin Lombard, now deceased. Lombard is bankrupt. The note is valueless. Also my one-sixth interest in a number of oil paintings, which I transferred by bill of sale to my sisters and brother for value received. I think of no other personal property. Yes; some mining stocks, also given to my mother to apply on my indebtedness to her. I did not have the mining stock at that time. I think of nothing else.

Q. Did you transfer or give all of your personal property that you had left on the 21st of July, 1879, to your mother or did you retain any; if so, what?

Objected to by B. & B.

A. I transferred it all to her about that time, with the exception of the ⅙ interest in the oil paintings and the Lombard note. The mining stock spoken of I did not have at this time. I got the mining stock some time during the fall of 1881, I think, from Mr. C. T. Bowen; don't remember the names of the companies.

Q. Did you transfer or give all your real estate and interests in real estate that were of value to your brother and sisters by the conveyances of July, 1879, or did you retain any; and, if so, what?

Same objection.

A. I transferred all of value.

Q. Have you bought or acquired any real estate of value since that time?

Same objection.

A. No, sir.

Q. Have you acquired any personal property of value since that time?

Same objection.

A. No, sir.

Q. Is there any real or personal property standing in the name or in the possession of others in which you are interested, directly or indirectly, by written or verbal contract?

Same objection.

A. None that I know of.

Q. Did you ride home in a carriage last night?

Same objection.

A. I did; the carriage belongs, I believe, to my family; I have no interest in it.

Q. Why do you say "I believe?"

Same objection.

A. Because I never made any particular inquiries as to the ownership of it.

Q. Who keeps the books and financial records of income and expense for the family?

A. My brother, I believe.

Q. Why do you say "I believe?"

A. Because so far as I know he does.

Q. Does your mother keep any books or records relating to her income or expense?

A. Not that I know of.

Q. Do any of your sisters?

A. Not that I know of.

Q. Who keeps such books for them—mother, brother, & sisters?

A. I understand that my brother, together with one of my sisters (Miss Elsie), does.

251 Q. What books do they keep relating to the family and their income and expense?

A. I understand it is a blotter—what I would call a blotter—giving the receipts and expenditures of the family.

Q. Is this a blotter such as has been kept in your family since your father's death?

A. No, sir.

Q. State the difference in keeping the record of family income and expenses before and now, if any.

A. No books of any kind were kept whatever during my administration of the estate, neither by myself or any other member of the family. Expenditures were made mostly by checks on banks; receipts of money by deposits in same, I drawing the checks and making the deposits as administrator of the estate; also in my individual capacity, I keeping two accounts—one in the name of the estate, another in my own name—during part of the time I was administrator. This individual account that I kept was really money of the estate. I found out soon that it was impractical to keep two separate accouuts, and so gave it up, drawing on the estate account both for my individual matters and estate matters.

Q. Did you meet the expenses of household and family by checks or in what manner?

Objected to by B. & B.

A. Mostly by checks. The household expenses were paid by checks to the order of the parties keeping an account with the family. Family expenses were met mostly by checks payable to the order of myself or bearer, I generally drawing the money and giving it to the family as they asked for it—I mean by family expenses money, as any one of the family might desire, either mother, sisters, or brother.

Q. Did you give them money as they asked for it or wanted it?

A. Yes, sir.

Q. Did you take any receipt for what you paid them?

A. Sometimes I did. I remember that at times when members of the family were absent from the city they wrote me for money. I sent the same, and generally received their receipt by return mail. The reason for taking receipts in these instances was, as I remember, that they generally sent receipts; at times they did not; there was no particular reason.

Q. Who paid for the repairs and improvements, horses, garden, &c.?

A. I as the estate's administrator.

Q. Were you recognized by all other parties as the administrator and legal representative of the family?

Same objection.

A. I think not.

Q. Who paid the coachman and gardeners and other servants?

A. I paid the outside servants, taking their receipts in the name of the administrator of the estate.

Q. Up to what time did that custom continue?

Same objection.

A. Until we had no outside servants, about the summer of 1876, never having had any occasion to resume.

Q. When you settled with me for part of the $5,000, first installment, in the spring of 1878, and again in the summer and fall of that year, when making payments, you gave me the checks of yourself as administrator, did you not?

Same objection.

A. Some of them were signed as administrator, I believe; others were signed by me individually; I am positive as to the latter.

Q. Who paid the taxes upon the property of the estate in 1877, '78, & '79?

252 A. The taxes for those years were not paid until 1879, and then paid by my brother. The payment was delayed on account of testing their legality in the courts, all of them, for those years, and I think for previous years as well.

Q. Who collected the rents during those years on property of the estate?

A. For the years '77, '78, and a portion of '79 I collected the rents, and for the remainder of '79 the rents were collected by my brother. The receipts for rents were signed by me individually.

Q. For what reason?

Same objection.

A. The leases were made in my name, I believe, of the greater portion of the estate by the advice of my attorneys, Barker and Wait; also the firm of Barker, Buell & Barker.

Q. What reason was there for so acting and advising you?

Same objection.

A. They gave no reason; I obeyed orders.

Q. Did you know of their reasons for so advising you?

Same objection.

A. I did not; never asked them, they being our attorneys—I mean the estate's attorneys. I mean by the estate the estate of Alexander White, deceased. My mother, so far as I know, never had an attorney except of late. Mr. Barker, as long back as I can remember, acted as my father's attorney and he continued with others so to act for the whole family after father's death.

Q. If he did not act for the whole family what do you mean by attorney for the estate?

A. I mean that he was the attorney for estate and not of any particular individual of the family.

Q. What other attorney besides Mr. Barker & Barker's partners have your mother, brother, or sisters ever employed?

A. None that I know of.

Q. What other attorneys have you ever employed in relation to matters and things growing out of the management of the estate?

A. None that I know of.

Q. Mr. Barker, then, and his partners did always act as the attorneys for all of the parties interested in the estate, did they not?

A. No, sir; I myself employed for myself on my own personal account other attorneys—Williams and Thompson, Mattocks and Mason, Marshall C. Kelly, Robert Rae, A. L. Dowd, and may be others.

Q. Did you employ them on matters relating to the estate; if so, what?

A. They were employed solely on my individual matters; not on matters of the estate.

Q. Who was your attorney in the settlement of your accounts as administrator?

A. Barker, Buell & Barker.

Q. Who were the attorneys of your mother, sisters, & brother in the settlements of your accounts as administrator?

A. The same firm.

Q. Now, what is the reason that you took and executed the leases relating to the estate in your individual name?

A. I have already answered that question; it was by instruction of the estate's attorneys; I mean the firm of Barker, Buell & Barker.

Q. And do you mean to have us believe that you never asked them the question why they so advised and instructed you?

Same objection.

A. I do not remember of doing so.

Q. Did it not excite your curiosity to know why you should do so?

A. I do not remember that it did.

Q. Were you in the habit of following the instructions of Mr. Barker without asking questions in matters of the estate?

253 A. Some matters I was and some matters I asked questions about; it depended on the matter.

Q. Explain, if you please, the nature or difference of these matters, when you asked and when you did not ask for his reasons in giving instructions.

A. When the matter in question was simple like making leases I thought no more of it than to follow his advice. I remember, when the matter of contesting taxes came up, involving as it did some $30,000, we talked about the advisability of contesting the same.

Q. Did you, during these years and while you were acting as administrator, keep any books outside of what you stated as to bank accounts and checks?

A. No, sir; no books; at no time. I kept no memorandum book.

Q. What did you keep in any way or manner as evidence of the income or expenditures of the estate?

A. My expenditures as administrator were made mostly by bank checks, which I preserved, by receipts for the same, and by memoranda on paper; not in book form; I mean on loose slips. My receipts of money were evidenced by deposits in the banks. The names of the banks are the Importers' & Traders' National Bank of New York, the City National Bank of Chicago, and the Traders' National Bank, also of Chicago.

Q. When have you settled up your bank accounts in relation to those matters the last time?

A. About July, 1879.

Q. Did you ever have any accounting or settlement with the estate before that time?

A. No; never.

Q. Why not?

A. I never thought of it.

Q. Have you got the bank book, checks, receipts, and vouchers on which you made that settlement in 1879?

A. I think I have them. I think they are in the vault in my office.

NOTE.—(Witness requested to get them.)

NOTE.—Witness produces checks drawn on the Traders' National Bank of Chicago, covering a period of time from Sept. 19, 1872, to May 19, 1879.

Q. Where are your checks on the other banks?

A. I supposed they were all in the vault. I cannot now lay my hands upon them. I think they are in the vault. I will search for them and endeavor to produce them to-morrow morning.

Q. Where are the other vouchers spoken of?

A. They are in the vault. (Witness requested to produce them.) I also produce various receipts covering the years 1872 to 1873, inclusive (7 p'ck'g's). I also produce the checks on the City National Bank of Chicago from May 1st, 1872, to Nov. 9th, 1874; also the checks on the Importers' and Traders' National Bank of New York from May 15th, 1872, to March 5th, 1873.

Q. Where are the loose slips or memoranda which you spoke of?

A. I think they are filed with the vouchers.

Q. Did yourself or any one in your behalf ever make a statement or compilation of the various matters shown by these checks, vouchers, receipts, and memorandums?

A. Yes, sir. I made a compilation. (Witness here produces a detailed statement covering a large number of sheets of paper.) I have here a statement of the credits and debits between R. Fowler and myself. If you will give me until to-morrow I think I can give a succinct statement.

254 (Witness given until to-morrow to produce the same.)

Q. How much came into your hands altogether as administrator of the estate?

A. About $324,000.

Q. How much did you altogether disburse as administrator?

A. About $189,000.

Q. How do you get at these figures so readily when now testifying?

A. It is according to my final report to the county court of Lake county.

Q. How is that made up or got at?

A. By figures.

Q. Who did the figuring?

A. I did.

Q. From what statements, vouchers, memoranda, or other evidence did you get at the figures?

A. From deposits made in the various banks as taken from the bank books. I refer to the three banks before mentioned.

Q. Have you now within your reach a computation of the deposits so made and credited to the estate?

A. Yes, sir; I think I have.

(Witness requested to produce it.)

Witness also requested to produce the bank books, and given until to-morrow to do so.

Q. Who assisted you in making up your account to the county court?

A. Mr. Barker, my attorney (Joseph N. Barker).

Q. What caused you for the first time to enter into an accounting with the estate in July, 1879?

A. My mother, sisters, and brother demanded a settlement.

Q. Through whom?

A. They demanded directly of me.

Q. What was the cause of it?

Objected to.

A. The estate had not sufficient funds to pay the taxes, which had been accumulating for a number of years past. Several checks on the estate account in the bank were thrown out for want of funds to its credit, and they desired me to explain how it was the estate was in such financial condition. They desired me then to make a statement showing the condition of the estate and file a bill to partition the estate.

Q. Were you as administrator made a party to the petition?

Objected to; record is better evidence.

A. I think not.

Q. Were you charged in that suit with being a defaulter?

Same objection as previous.

A. No, sir.

Q. Were you a defaulter to the estate at that time?

A. I think I was.

Q. To what amount?

A. It was at least $100,000.

Q. What other persons were you indebted to at that time—say in July, 1879?

Objected to.

A. Joseph N Barker, about $1,000 for legal services; Storrs Bros., of N. Y., about $2,500 on a note; Mr. C. B. Hosmer, of Chicago, $2,500 on a note; Northwestern Nat. Bank, Chicago, about $1,000 on a note or guarantee; F. W. Cotzhausen, about $15,000 on notes; Potter Press Co. of N. Y., about $4,500 for guarantee on notes;
255 Wm. S. McMicken, about $8,000 on 1 note; Protection Life Ins. Co., about $20,000 on note secured by m't'ge; S. B. Munson, about $1,000 (guarantee on note); B. F. Guyton, about $1,000 (guarantee on note); Cleveland Paper Co., $6,000 on notes secured by chattel mortgage of American Oleograph Co. That is all I recollect now.

Q. Did you have any of your note or notes, with your name on, in the hands of brokers during the years 1878 & 1879 for the purpose of having them negotiated?

A. I did.

Q. Have you included them in the aforesaid statement?

A. Not all of them.

Q. Will you please add such others as now come to your mind?

A. I made various notes at various times, varying from $1,000 to $5,000, sometimes guaranteeing notes made by others. I could not

describe any one in particular. I believe they have all been paid except the notes as noted.

Q. Were you not also indebted to F. W. Cotzhausen on notes of the company, amounting to $3,400 and upwards, the payment of which was guaranteed by you on the removal of the concern to Chicago?

A. I remember of guaranteeing some notes, but not the amount.

Q. Do you know of a single dollar that F. W. Cotzhausen ever received from you or the company after he had yielded to your request in consenting to the removal of the shops to Chicago?

Objected to by B. & B.

A. I do.

Q. Please specify when and where.

Objected to.

A. Nov. 4th, 1878, he was paid $300 for third quarter's interest on first year's deferred payments of purchase-money of stock. Dec. 3rd, 1878, he was paid $1,033.32 as a final amount due on the first cash payment of $5,000 and interest.

Q. Had he deferred, at your request, the payment of this $5,000 first installment until this time?

A. I believe he had.

Adjourned to Friday morning, June 23rd, 1882, at 9 a. m.

FRIDAY MORNING, *June 23rd*, 1882—9 a. m.

Q. Did I understand you to say that your mother and one of your sisters intended to go East at an early day?

A. They have been talking about it. I think they intend to go as soon as they are examined in this case.

Q. Did you, at my request, communicate to them last night that I would accommodate them and consult their convenience and would be ready to examine them this morning?

A. I stated to my mother that you desired her presence down town this morning. She desired to be excused from coming down this morning by reason of sickness; also requested me to have her examination take place at her home; that she hoped to be able in the morning to accommodate Mr. Cotzhausen—I mean to-morrow morning. I said nothing to my sister about it. My sister's name is Miss Annie. I did not bring her down because I did not understand that she was wanted here this morning.

NOTE.—By consent of parties, next Thursday at 11 o'clock a. m. is fixed upon for the examination of Mrs. Alexander White and Miss Annie White, and from day to day thereafter until such examination shall be completed or suspended for good cause. The home of Mrs. White is fixed upon as the place of taking her examination, it being represented that by reason of indisposition other places would not be convenient.

256 Defendants' counsel waived the issue of a subpœna and compulsory attendance as to Mrs. White and daughter.

Miss Margaret White, the eldest, is in Litchfield, Connecticut. I do not know when she will come home. Her address is Miss Margaret White, care of Dr. H. W. Buell, Litchfield, Conn. Miss Elsie and Miss Mary S. White will return from the East this week home and stay several weeks. My sister, Miss Annie, is here with her mother. My brother James is also here.

NOTE.—Plaintiff's counsel now gives notice that he will proceed with the examination of Elsie and Mary S. White from and after Thursday next, in close continuation of the examination of Mrs. White. Issue of subpœna and compulsory attendance is waived by defendants' counsel.

Q. Since moving to Chicago have you ever paid a dollar to F. W. Cotzhausen on account of the balance of purchase-money of $15,000 evidenced by three notes, or on account of the notes of the company, the payment whereof was guaranteed by you on such removal?

Same objection.

A. I think not; though I do not remember distinctly about the amount or time of the company notes that he speaks.

Q. What was the whole amount of your indebtedness about the time of the transfer to your relatives, in the aggregate?

A. About $157,000.

Q. How much of that was secured indebtedness, if any?

A. None of it.

Q. Did it include the $20,000 note and mortgage to the Protective Life Insurance Company?

A. No, sir.

Q. Did you, from this estimate, except any other items?

A. There was another mortgage to the Protective Life Ins. Co. I mean to correct my former statements. I misunderstood the question in regard to the aggregate amount of my indebtedness. I thought it referred to my indebtedness to my relatives. I cannot state the whole amount at present, as I have not the data with me.

Q. Was it a quarter of a million?

A. I should guess that it was perhaps $200,000.

Q. Was it not nearer a quarter of a million, since I have called your attention to certain statements and figures made by you in former answers?

A. I think, now, about $230,000, from the data as just read by Mr. Cotzhausen, based upon my previous answers. I think I made a mistake in the names of parties to whom I was indebted; particularly to Munson.

Q. Did you ever make application to be admitted a member of the Chicago bar?

A. No, sir.

Q. Why not?

A. Having no occasion, as yet, to do so.

Q. What do you do for a living?

A. At present I am assisting my brother in his business, it being the care and charge of real estate belonging to himself and family, his sisters and mother.

Q. Do your brother, yourself, and Mr. Barker occupy the same offices?

A. We do.

Q. Do you use the same vault?

A. We do.

Q. For how many years back?

A. Less than a year.

Q. You did so occupy office and vault before you went East to study law, did you not, and again since your return?

257 A. Before going East my brother had no particular office. At that time I made my headquarters at No. 85 5th Ave; had my own office then.

Q. Where were the papers, vouchers, bank books, and receipts kept which you produced yesterday relating to the estate, before you went East in 1879?

A. In my office, No. 85 5th Ave., until I went East, about July, 1879. I placed them in a trunk which was removed to my mother's residence, having given up my office at 85 5th Ave. They remained at my mother's residence, I think, until some time in the fall of 1881, when they were placed in Mr. Barker's vault for safe keeping. I opened the office in 5th Ave. I think in 1878; maybe 1877. I opened the office in 5th Ave. at least nearly a year before the Lithograph Co. was moved there. The books and papers before that time were kept at various offices—my own office, 150 La Salle St.; my own office, 39 Franklin St., and in the vault attached to the office of Barker and Wait, Barker, Buell & Wait.

Q. Where are the various bank deposit books spoken of yesterday; are you now ready to produce them? I call for the books relating to the estate.

A. I now produce my account as administrator with the Importers' and Traders' National Bank of New York from its commencement, April 20th, 1872, to its closing, March 6th, 1873, together with the vouchers (six in number).

Marked "Exhibit 4" by F. A. Moore, notary.

My father died about March, 1872. Alexander White then had a deposit in that bank—$19,653.02. I afterwards deposited $866.88; that was the proceeds of a sale of a painting called the "Standard-Bearer." Between May 15th, 1872, and March 5th, 1873, I checked out these moneys as administrator for purposes of the estate, with the exception of the last check of $106.51.

Q. Do you mean to say that you commenced to misappropriate the funds of the estate at that early time?

"Book of Importers' & Traders' Bank, marked Exhibit 4."

A. No, sir. I mean by that that I used the last check of $106.51 on my own account. Said checks are as follows:

No. 1, May 15, '72, Mary S. White	$100 00
No. 2, June 3, '72, Parsons & Co	27 00
No. 3, June 4, '72, City Nat. Bank	15,000 00
No. —, June 8, '72, Traders' Nat. Bank, Chicago	5,000 00
No. —, June 21, '72, Elsie White	350 00
No. —, March 5, '73, to estate of Alex. White, dec'd	106 51

I now produce my bank deposit book with the Traders' National Bank of Chicago as administrator of the estate from May 6th, 1872, to Nov. 30, '77, together with the checks drawn by me as administrator from Sept. 19, '72, to May 19, '79—about the time of the closing of my account with that bank.

Q. Where is the bank deposit book from Nov. 30, '77, to the close of the account?

A. In the Traders' National Bank I have been unable to find it, having searched diligently for the same both last night and this morning in the vault when I found the other bank books, and also in a trunk where I formerly kept the same. I've got all the checks up to the closing of the account, which I now produce.

Q. Will you procure for our use a duplicate of the bank deposits from the close of this book until the close of the account?

A. I will, if I am able to do so.

Traders' National Bank book of Chicago, marked "Exhibit 5."

I have been unable to find in the vault the bank book of the City National Bank of Chicago in account with myself as administrator. I, however, produce my checks on the same from May 1st, 1872, to Nov. 9th, 1874, when my account closed with the said bank.

258 Q. Will you procure for our use a duplicate of the bank book, showing the deposits and checks drawn in your official iness with that bank?

A. I will if I am able to do so. I have been unable to find the computation asked for yesterday, having looked in the vault and my trunk where I supposed it was. I think I will be able to find it; it must be in one of those two places.

Q. Define and explain fully on what basis and in what manner you figured so as to arrive at the aggregate of disbursements properly to your credit as administrator of the estate.

A. I made it up from the bank books and the checks thereon, together with the receipts for the checks; also other receipts which were paid for in cash; I had nothing else to go by.

Q. Did you credit yourself, on such accounting with the estate, with anything more than the receipts now produced and on this table called for?

A. I think most of them are there; I can't say if I did, not having examined the papers of late; I think, however, there may be other receipts or vouchers.

Q. Did you debit yourself on such accounting with all moneys which the three bank books referred to this morning show to have been deposited?

A. No, sir.

Examination continued, by agreement, until Thursday, June 29th, 1882, at 11 a. m.

JUNE 29TH, 1882.

Complainant then introduced ANNIE C. WHITE as a witness, who testified as follows:

Annie C. White; age, 26; I reside in Chicago with my mother and sisters and brothers. The whole family, except my brother Alex., live together. He lives in New York; he is studying law there; I do not know how I know it; he told me himself last summer; have not talked with him about it since; that is all I know about it. Alex. returned from the East to Chicago last winter, as I remember; he has been living with us since. We take our meals at the same table. He has a room of his own in this house; I now refer to the residence of the family. I have not been East of late; have been in Chicago. Some of my sisters were East. Mother keeps house for all of us.

Q. Are you in the habit of spending any money yourself directly?

Objected to as irrelevant.

A. Yes; for my personal use. I spend money for my board; I get it from my mother.

Q. Have you any certain or regular income, or do you get money from your mother when you want it?

Objected to.

A. I get it from my mother whenever I want it.

Q. Have you ever kept any regular account of what you received?

Objected to.

A. No, sir.

Q. How much money have you received altogether since you were of age?

Objected to.

A. I don't remember; have no idea; cannot tell within a thousand dollars, more or less; never kept any account or memorandum of any kind.

Q. Did you ever receive any money from Alexander White?

Objected to.

A. No, sir; nor from James B. White.

Q. Was there ever a guardian appointed for you while you were under age?

Objected to.

259 A. I don't remember.

Q. Did you ever hear of a guardian being appointed for you?

A. No.

Q. You knew that Alex. White was the administrator of the estate, did you not?

A. Yes.
Q. When was he appointed?
Objected.
A. He was appointed after my father died, nine or ten years ago.
Q. Did he have the management of the whole estate for all of you?
Objection.
A. Yes.
Q. What did he do as administrator?
Objection.
A. Took charge of the estate.
Q. Explain.
Objection.
A. I do not know what he had to do. I cannot explain.
Q. Who took charge of the household while he was administrator?
Objected to.
A. My mother.
Q. Who paid the servants?
A. My mother; she also paid the grocery, meat bills, & others.
Q. Where did she get the money?
A. I don't know.
Q. Did you ever do any figuring or accounting with Alex. White as administrator?
Objection.
A. No, sir.
Q. Did you ever figure up how much was coming to you as your share of the estate?
Objection.
A. No, sir.
Q. Did any one do the figuring for you?
Objection.
A. No.
Q. Can you tell me what real estate or personal property you owned in July and August, 1879?
Objection.
A. I cannot.
Q. Did you ever employ a lawyer to attend to your business?
A. Yes; Mr. Joseph N. Barker; don't remember when.
Q. Was it several years ago, or several months ago, or when?
Objected to.
A. I don't remember.
Q. What did you employ him for?
Objected.

A. I don't know.
Q. What was the occasion of your so employing him?
A. I don't know.
Q. Who told you to employ him?
A. My brother Alex.
Q. What did he tell you?
A. I don't know—can't remember. He didn't say anything to me.
Q. What was the need of a lawyer when he spoke to you?
A. I don't know.
Q. Did you ever hear that your brother had embezzled the money of the estate?
A. Yes.
Q. Who told you?
A. My mother.
Q. When?
A. I don't remember when; can give no idea.
260 Q. What did you hear of it?
A. I don't remember; can give no idea.
Q. How much of your money had he taken?
A. I don't know; cannot tell whether it was five or fifty thousand of my money he has taken.

All of the foregoing is objected to as irrelevant.

Q. Did you ever get any of that money of yours, which he had taken, back?

Objected.

A. No; I don't think so.
Q. What instructions did you give to Mr. Barker when you employed him as your attorney?
A. I don't know.
Q. What report has he ever made to you as to what he did?
A. I don't know.
Q. Did Mr. Barker ever make any report to you?
A. I don't know.
Q. Did you ever pay him anything for his services?
A. I don't know.
Q. Do you know of any other question, matter, or thing relating to the defalcation of your brother and the settlement of his accounts as administrator that you could answer and disclose?
A. No.
Q. Have you any idea what the property is worth which your brother Alex. turned out to yourself, sisters, and brother in July, 1879?
A. No.

And on cross-examination by Mr. BARKER the said ANNIE C. WHITE testified as follows:

Q. Where were you living when your mother told you Alex. had spent all the money of the estate?

A. In Chicago, on Dearborn Ave.
Q. What did she say about employing an attorney and what for then?
A. I don't remember.
Q. Did you ever hear your mother tell Mr. Barker to get a settlement with Alex. for the money spent by Alex.?

Objected to by Cotzhausen because suggestive and not cross-examination.

A. No; I did not.
Q. When you learned Alex. had spent all the money was Mr. Barker sent for to come to the house?

Same objection.

A. Yes.
Q. Why was he sent for?

Same objection.

A. I don't know.
Q. What years did you live on Dearborn Ave.?
A. I do not remember the years.
Q. Did you go to Dearborn Ave. when you came from Lake Forest?
A. No.
Q. How long were you in New York?
A. I don't remember.
Q. How much of each year has Alex. spent in Chicago since 1879?
A. I don't remember.
Q. Has he only visited here or resided here since that time?
A. Visited.
Q. Who conversed with Mr. Barker when he was sent for on Dearborn Ave., if you know?
A. My mother and sister Elsie.

Re-examination:

Q. How do you know that your brother is merely visiting here?
A. I don't know, except I know he just came on here. He came on here some time in the winter. I think he was here already last fall; don't think he has been here a year. I do not know what his residence is East.

ANNIE C. WHITE.

261 Complainant introduced Mrs. ANN WHITE as a witness, who testified as follows:

Q. When did your husband die?
A. In 1872. I lived at Lake Forest at that time. The whole family were together; Alexander White took charge of the estate; he was administrator of the estate, and at my request the children consented to his being appointed administrator.

Objected to by Barker.

Q. Was there ever any guardian appointed for the children who were under age?

Same objection—irrelevant.

A. No, sir; except that I was appointed guardian for James, who was not of age.

Q. Where did you live at that time?

A. In Lake Forest. We continued to live there for four years after Mr. White's death—until 1876. I managed the household for all of us. My son Alex. managed the outside matters most of the time. He had the whole charge of the green-houses, paying the men and everything. He had charge of everything outside of the household, financial and all, until 1879. He had charge for seven years—until all the children had become of age. James is the youngest. He was born in New York city Dec. 30, 1857. There wasn't any one that assisted Alex. in the management of the estate.

Q. Who settled up with him?

Objected to, because no settlement is specified.

A. Well, we applied to Mr. Barker. He was the one who was our attorney. We put it all into his hands. "We" means the whole family.

Q. What did you put into his hands?

A. To settle up the estate.

Q. When was this?

A. In 1879.

Q. Why had the matter of the estate and settlements or accountings been allowed to run until this time?

Objected to as irrelevant.

A. Because we had perfect confidence in Alexander, and I supposed that everything he did was all right.

Q. How much money had you already received from Alexander until this time of settlement, in July, 1879?

A. About seven thousand dollars a year.

Q. What for?

A. To keep my family and the whole outside of the place. I mean by keeping my family, supporting them; covering all my family expenses, household and personal.

Q. Did you give your daughters any portion of these moneys or did they obtain funds from the administrator directly?

Objected to.

A. I gave the money to them, as a general thing; that is still my custom yet, to-day.

Objected to by Barker.

Q. Do you run your household and family matters at present differently from what you did the first years after your husband's death or substantially in the same manner?

A. Not exactly the same. We keep the accounts a little now. My youngest son keeps them. My oldest daughter signs the checks jointly with my youngest son.

Q. Why is that?

Objected to as irrelevant — immaterial.

A. The reason is I think it is the better plan to have them both and not to depend on one. It was my request to do so. This arrangement has been since the division, in 1879.

Q. What division do you refer to?

A. The division of the property amongst all the family.

262 Q. Will you please explain fully what was done in 1879 in relation to the estate and all about it?

Objected to.

A. We gave the whole charge to our attorney, Mr. Barker.

Q. Do you know what he did?

A. He divided the property; can't explain how. I suppose each one had their share—was the way I understood it—to divide it evenly. The household furniture came to me. I had my part in a building, which was given to me; that was the 5th Ave. building. The balance was divided among the children.

Q. How was it divided among the children?

Objected to. The real estate was partitioned by order of court and the decree in the case is the best evidence.

A. Equally.

Q. How did it come that this division was made?

Objected to.

A. We thought it was the better way, when Alexander had made a failure of taking care of our estate, to have a division. We all thought so ourselves. My oldest daughter and I talked it over. Mr. Barker so advised us.

Q. Why did you think a division should first be had after you had found Alex. to be a defaulter?

Objected to.

A. Can give you no other answer than because we thought so. My oldest daughter talked it over & youngest son & thought so.

Q. Where did you first hear or learn that Alex. had embezzled the funds of the estate?

A. In July, 1879, I think. It was not before a check was refused at the bank; that was the first intimation we had.

Q. Whose check and what bank?

A. It was a check on the Traders' National Bank; the check was payable to himself and given to me for the meat market; it was a small sum—not over $20.00. The butcher came to us and said — check was refused at the bank. We then went to Alex. & told him why payment was refused & we wrote to Mr. Barker. Alex. said

very little about it; didn't want to talk much about it; said it was a mistake; didn't want to say or hear anything. My daughter Elsie wrote to Mr. Barker, our attorney, that we wanted to see him. He came to the house.

Q. Did he know all about it?

A. No, sir; he did not; was as much astonished as I was. Mr. Barker came to the house and we advised what to do. We decided to have Alexander show his books, but ne had none; did not keep any. We decided to have things all looked over and see how they stood. We found out the money was all gone. That was all that took place that day.

Q. What next was done?

A. I left it then to Mr. Barker. He reported our taxes & assessments for three years on our property wasn't paid. We then proposed the division after we found out how things stood. The division was to be made equally through the courts amongst all the children evenly.

Q. Why did you not charge Alex., on that division, with the moneys of the estate he had appropriated?

A. We did. We talked to him about it, but could get very little satisfaction. He didn't want to hear anything about it; seemed to be very nervous. Then we had to put it in the hands of our lawyers and find out through them what he had to say for himself. We charged him through our lawyers.

Q. Do you know the particulars of how they charged him?

262½ A. I cannot answer that.

Q. Can you give me any idea how the defalcation was ascertained and charged to him?

A. I cannot answer that; I know our money was gone.

Q. Have you not any papers—deeds, documents—showing how this defalcation was settled or adjusted?

A. Yes; my son has them for safe keeping.

Q. What are they?

A. I cannot tell you what they are. I never trouble myself with anything of that kind, as I do not understand.

Q. Have you settled all your matters and differences with Alex. growing out of this defalcation?

A. I had to get a judgment against him at the time of the division of forty-two thousand dollars, because he owed it to me.

Q. Did you collect it?

A. No; I never expect to.

Q. Why, then, did you take that judgment against him?

A. I knew that he owed me that money, but didn't know exactly that everything was in the state it was.

Q. Who advised you to take that judgment?

A. Mr. Barker & Mr. Buell.

Q. For what reason—why did they so advise you?

A. I cannot exactly explain it.

Q. How much has been paid on that judgment?

A. Alexander handed me a bunch of notes that were owing him, which I found out were perfectly worthless. So far I never received

a cent from them, and don't expect to. There was some quarry stock. I haven't found out if that is going to amount to anything. That is all I received.

Q. Who has got all these notes and papers now?

A. My son James has them. He keeps them in the safe in his office.

Q. When did your son give you this bunch of notes and this stock and other things?

A. At the time that he gave up taking charge of our estate, but I can't be sure of the date.

Q. Did Alexander give you all he had left?

A. Yes, sir.

Q. Did you give Alexander any receipt when you received these securities and papers?

A. Yes, sir; I think I did. Can't be sure who wrote the receipt; I don't remember. I signed it in the house; do not remember who was present or who asked me to sign it. I know what it contained—just those notes and the quarry stock.

The paper is the best evidence of what it contained.

Objection by B.

I do not know what it contained. My son James has got all those papers; we don't keep any of them in the house.

Q. Will you please show me the book or memorandum which was kept for the purpose of noting how much Alexander paid over to to you from time to time after your husband's death?

A. Well, I haven't got it. I don't — where the book is, and I am not sure that there was any regular account.

Q. Where is the blotter or irregular account?

A. If we've got one my son Jim has it.

Q. How do you know that you used only seven thousand dollars a year in the household if you did not keep a book or memorandum?

A. That was mere calculation; I said about that.

Q. How did you calculate it?

A. Because we were always using about the same thing.

Q. Did you ever figure it up or attempt to do so?

A. In a light sort of way; not close, I mean.

263 Q. What is there to lead or guide you in estimating your household expenses at seven thousand dollars a year?

Objected to as irrelevant.

A. We done it slightly for a time. We estimated for a time, and then our expenses were always about the same. That's the best light I can give you.

Objected to by B.

Q. How much money did Alexander give Elsie?

A. He did not give her any money more than the others. He gave her none, to my knowledge.

Q. How much did he give James?

A. None.
Q. How much has James given Alexander of late years?

Objected by Barker.

A. I can't say. He has given it to him in small sums.
Q. How much has Elsie given Alexander of late years?

Objected to as irrelevant.

A. Can't say; it is given to him by them both together. The checks are signed by them both.
Q. How much have you given Alexander of late years?

Objected to as irrelevant.

A. Nothing.
Q. What are you worth, in your own right, in personal and real estate?

Objected to as emphatically irrelevant.

A. Can't tell exactly. I have got that building, Nos. 83, 85, & 87 5th Ave.; think I also have some interest in some dock property; don't know its value. I do not mean the pictures. Most of the valuable ones belong to the estate. The engravings are mine.
Q. Do you keep any books in the house now?

Objection.

A. No, sir; my son James is the only one who keeps books.
Q. Does he keep books for you?
A. Yes; he does all of my business and keeps the books for the estate and the whole family.
Q. Do you draw any fixed amount of money from him, or as you want it?

Objected to as irrelevant.

A. As we want it.
Q. Have you any especial account with him?

Objection.

A. It is all together.
Q. Is there any difference in running your household and managing your estate and family matters now and during the first years of your widowhood? If so, point out the precise differences.

Objected.

A. Just the same—all alike—I mean our shares are alike, except that Alex. is outside since 1879, and doesn't share with the rest.
Q. All in one pot?

Objected.

A. They are willing to do that—all in one pot.
Q. Who signs the leases of the estate?

Objection.

A. James; in his own name.

Q. Also for your building on 5th Ave.?

Objected.

A. Certainly.
Q. Why is that, Mrs. White?

Objected.

A. We do it because we are all often away a thousand miles from here and it is more convenient.
Q. Has that always been your custom?

Objected.

A. It always has been.
264 Q. Does James manage all property belonging to yourself and family in this way, in his own name?

Objected.

A. He does; his brother helps and assists him in renting a little; gives him a little advice.
Q. Who collected the rents while Alex. was administrator?

Objected.

A. He collected them himself.
Q. Did he give the leases in his own name, the same as James does?

Objected.

A. The same.
Q. How much did Alex. spend while administrator in the building now owned by yourself on 5th Ave., Nos. 83 to 87?

Objected — irrelevant.

A. Sixty thousand dollars.
Q. Was that by consent of yourself and other heirs?

Same objection.

A. Yes, sir.
Q. Was he authorized to make improvements all the time?

Objected to.

A. He was authorized to put up two buildings.
Q. Have you had any accountings or settlements between you or between the present manager and any one of the heirs since July, 1879?

Objected as irrelevant.

A. No.
Q. Why is that; why do you always let things run in this way?

Objected to as irrelevant.

A. Because my daughter signs the checks and looks after things so that we are satisfied that it is differently now.

Q. How do you know that all receipts and income goes on deposit in the bank if no settlements are had from time to time?

Same objection.

A. We are satisfied that way; occasionally we see the bank book when we have it up here.

Q. When Alexander was administrator and he gave you money for household or family did you give him any receipts?

Objected to.

A. We did not.

Q. In what form did he give you the money?

A. He generally gave it to me in cash.

Q. How was the balance for which he was found indebted arrived at; do you know?

Objected.

A. I don't know. I know nothing of the way it was figured. I left it with Mr. Barker and Mr. Buell.

Q. What are the average expenses of your household and family now?

Objected.

A. They are about the same.

Q. Do you defray the individual expenses of your daughters and sons now?

Objected.

A. No, sir; they are all willing to agree to that, although one may use some more than the other. There are no separate accounts kept; all is defrayed from the estate. It has been that way ever since my husband died.

265 JULY 6TH, A. D. 1882.

Examination of Mrs. ANN WHITE resumed:

Q. Has any of the real estate which was divided amongst the family, as you stated, in '79 been sold; if so, what?

A. No.

Q. What dock property was it that you spoke of as having been set off to you as widow?

A. I cannot tell exactly where it is, but it is easy to find out. Mr. Barker can tell you about it.

Q. How much rent do you get from the Fifth avenue building, Nos. 83–87?

Objected to as immaterial, because that building was set apart to her as her dower.

A. I cannot tell you.

Q. Why?

A. Because I do not know. My son James will know.

Q. What is done with the rents of that building?

Objected to for the same reason.

A. Part of it is used in keeping up the expense of the building and the balance goes, where the other goes, to the family altogether. Two thousand one hundred dollars goes to pay the interest on a mortgage which is on that building. The mortgage is $35,000, given on July 17th, 1879, at the time of the partition, to relieve the estate of assessments and back taxes.

Q. Have you or any one of the family ever given James B. White any written power of attorney?

A. My oldest daughter, Margaret, gave him a power of attorney; she does not live here; no one else.

Q. Have you or any one of the family ever given Alexander White any written power of attorney to manage the family estate?

A. No.

Q. Give me the name of the butcher you spoke of on your former examination.

A. Clyborn Brothers, North Side, No. —.

Q. After yourself and family had ascertained that Alexander was behind in his trust funds and you entrusted the matter to Mr. Barker, your attorney, what instructions did yourself and other members of the family give to your attorney?

A. We stated the matter to him just as it was and left the matter to him and Buell together. We gave them no particular instructions. I do not remember of any particular instructions either then or afterwards.

Q. Do you know of any instructions that you gave them, either then or afterwards; if so, what were they?

A. I do not remember. I suppose I gave some.

Q. If you suppose you did what do you suppose you said?

Objected to.

A. I cannot state anything at present.

Q. Did you make his defalcation public?

A. Yes, as far as necessary. I did not try to keep it secret.

Q. Tell us now what you did to make it public. Give us the facts.

Objected to as immaterial and entirely irrelevant.

A. I got a judgment against him for $42,000, which was necessary.

Q. Give us any other acts of publicity that you remember.

Same objection.

A. I do not remember of any.

Q. What was the Fifth avenue building worth in July, 1879?

A. I couldn't say.

266 Q. What is it worth now?

A. I cannot say.

Q. The $42,000 which you spoke of, how was that arrived at?

A. I cannot explain that exactly; we left it to the attorneys.

Q. Mr. Barker, you mean?

A. Yes; Mr. Barker. I cannot say how it was figured; I did not figure it myself.

Q. Have you any idea, of your own knowledge, how much Alexander owed you in July, '79, what for, and how the amount was arrived at?

A. My knowledge is that at the time of his father's death he had $156,000. There was some pictures that were sold after his death that amounted to between $2,000 and $3,000. At the time we found out, in '79, Alexander had rents discounted, amounting to over $2,000. I believe there was a note at the bank due for $1,000. Mr. Barker will know all about that. I know it was over $42,000 that Alexander owed me. He used all the money we had before we found out, and he had the rents; he used the rents also.

Q. Have you any idea how the amount of $42,000 owing to you was arrived at?

A. I cannot describe any nearer.

Q. What rents did the estate derive from the Fifth avenue buildings, No. 83–87, in 1877 and 1878?

A. I cannot say.

Q. Did yourself or other members of the family not consult with Alexander during those years as to the best mode of renting the property of the estate and managing the same to best advantage for the benefit of all of you?

A. That was left to him. I was gone two years in 1876 and 1877 and July, 1878.

Q. Which ones of the family were at home during that time?

A. Alexander; no one else.

Q. Alexander has sworn and testified that he talked to you in the early part of 1878 about a good tenant for the Fifth avenue building and an excellent business opening for James; is that true?

Objected to as leading and as being improper by reason of reciting the testimony of another witness on the part of complainant.

A. Yes; I returned in July, 1878. Between July and August, 1878, he spoke to me of renting the building; he spoke of a company that would come to it and would make a good sort of a tenant; he spoke of it that James might get in there and learn a business—might do something; I do not mean that business, but a business. I do not remember of anything else particular. He spoke also of having some slight interest in that. I remember that he thought it would be a good thing for us also to have some interest in that, but I objected to that; I told him that I would have nothing to do with the company nor hav*ing* anything to do with it; I would have no interest in it whatsoever. I do not remember of anything else passing.

Q. Were you aware that James had gone to Milwaukee in the spring of 1878 in connection with this business?

A. I was aware that James went in August, 1878, up to Milwaukee in connection with the lithograph company in which Alexander had some slight interest. I am not aware that he went there in the spring.

Q. How long did James stay in Milwaukee in Aug., 1878?

A. Two weeks, I think. I knew of his going there; he went there by my permission.

Q. Do you know the time when James returned from Milwaukee and the lithograph business was moved down to Chicago into the Fifth avenue building?

267 Objected to as immaterial.

A. I remember the time. I cannot tell the date, though. I knew of its being moved into the building in the fall; I think in September; that's all I know about it. I never went into the building to look at it. I never was in the building since 1876.

Q. How long after the company had gone into your building was it that Alexander went East?

Objected to as immaterial.

A. I cannot say.

Q. Did he not leave as early as December, 1878?

A. I do not remember that.

Q. What did he go East for during that winter?

Same objection.

A. I don't know.

Q. How long did he stay East?

A. I don't remember that either. I cannot say.

Q. What was his address East during the winter from '78 to '79?

Same objection.

A. Well, I don't think he had any particular address at that time?

Q. Who collected the rents of the estate during that winter?

Objection.

A. He did.

Q. Where did you get the money for the support of your family during that winter?

Objection.

A. We had some rents coming in. We got the money from Alexander; no other source.

Q. Who gave you the money needed in the household while he was gone East?

Objection.

A. We had a little supply in the house until his return, as far as I can remember.

Q. Did you ever run short of money while he was gone East?

Same objection.

A. I don't remember.

Q. When was it that yourself and family first learned of Alexander having misappropriated the funds and income of the family?

A. July, 1879, I think about the 15th, but can't be sure as to the date.

Q. You never heard of or suspected anything of the kind before, did you?

A. I did not.

Q. Do you still insist that the protest of check given to the family butcher was the first intimation which you had or other members of the family of Alexander's defalcation?

A. Yes; that is the fact.

Q. How soon was it after this first news that Alex. turned over his notes and other property by you spoken of to yourself in or about July, 1879?

A. It was soon after that. I cannot say. I do not think it was a month. I think it was at least two weeks. I cannot state the dates.

Q. How soon was it after Alex. had come home from the East?

A. I don't remember. I don't remember of his being East at that time. He went East the last part of July.

Q. Where had he been until he went East in July, 1879, and from winter on?

A. Part of the time at home with me in Chicago, part of the time in New York.

Q. When did Alex. commence the study of law at Columbia College?

A. He commenced it 1872, about six months before his father died. He then interrupted his studies and resumed them after the partition of the property in 1879. He then stayed two years at Columbia College. He spent part of his vacations down East and the balance at home in Chicago with me.

268 Q. Do you know Mr. S. B. Munson, Jr.?

A. I do not. I only met him once at my house; he came there; I cannot name the time.

Q. What did he come to your house for?

Objected to as immaterial.

A. As far as I can recollect, it was to get money or get security in connection with the American Oleograph Co. He spoke of Alexander being connected with that company, and wanted me to do something to help them by money or security.

Q. Did he not tell you at the time that Mr. Cotzhausen had attached the property of the company on account of some notes, for which Alex. and the company were holden?

Objected to.

A. He did not.

Q. For what purpose did he want this money or security?

A. I don't know. He did not give me to understand anything.

Q. What did he say as to Alexander's liability or connection to which you before alluded?

Objected to.

A. I do not remember particularly any more. He presented the matter in a few words. I think there was a gentleman with him, but I am not sure whether he was in the same room. None of my family were present.

Q. What did you respond to him?

A. I do not know. I did not want to have anything to do with it—that business.

Q. Did he not tell you at that time that Alexander was holden for a debt which the company could not pay, and that owing to Alex.'s absence he came to you?

Objected to.

A. I do not remember. I remember, however, that he said that the company was in a flourishing or good condition. That is the last I can remember.

Q. Why, if the company was in flourishing condition, did he appeal to you for money or security?

Objected to.

A. That is what I wondered at; what surprised me.

Q. Did you ask him any questions about it?

A. Nothing.

Q. Was Alex. in the habit of conferring with you or other members of the family in regard to business matters or the management of the estate?

A. No.

Q. Why not?

A. He thought we had confidence in him.

Q. Did you allow him at all times to do as he pleased?

A. Yes; we did.

Q. Did you or other members of the family ever have reason to repudiate or go back on any arrangement or contract which he made for you or the estate?

A. No.

Q. What caused you and Alex.'s brother & sisters to have so much confidence in him, and to allow him to manage the whole estate as he saw fit without consultation or conference?

A. I cannot give any other reason than that we trusted him. We knew he was sober and not given to any fast living.

Q. What was the reason for entering a judgment in your favor against Alex. immediately after he had gone East in 1879?

A. I thought we went over that already. I thought it was the best way to do, because I knew that he owed me a great deal
269 of money. I have given you all the reason I can.

Q. Did you enter that judgment by Mr. Barker's advice; if not, how did you come to do so?

Objected to.

A. By his advice and my own wish and desire.

Q, What did Mr. Barker tell you as to the necessity or policy of entering the same?

Same objection.

A. I do not remember.

Q. Can you give us any idea as to what he said?

A. I do not remember any idea that I could give.

Cross-examination by Mr. BARKER:

Q. Had Mr. White, your deceased husband, money on hand at the date of his death; if so, how much money, if you remember?

A. $35,000 in money. I remember the note of A. D. Reed for $60,000; Mrs. Carolina Couch, $31,000; money paid on real estate sold by Mr. White in his lifetime, $30,000.

Q. Who received all these sums of money?

A. Alex. He did not pay the money to me or the heirs; he used it himself.

Q. About how much money did you get from Alex. each year for the family expenses?

A. About $7,000.

Q. Who had the distributing of that money amongst the children for their individual expenses and house expenses?

A. I did that myself, generally, unless we were away; Alexander sent us a check for traveling expenses.

Q. Who collected the rents and had charge of the property from 1872 to 1879?

A. Alex.

Q. Did you know the amount of the rents per annum prior to the building of the Lake and Franklin and Fifth avenue buildings? If you know, you may state.

A. From $11,000 to $12,000 before that time. The buildings were put up in 1873, I think. Some of the plans, I think all but two, were out before my husband's death. There were but two buildings.

Q. About how much were the rents of the property belonging to the estate, if you know, after the two buildings were built, up to 1879, if you know?

A. I can't say exactly; they varied; they were less at first until the recorder's office was in the Fifth avenue building, when they were more than they have been since.

Q. Were they largely increased, after the buildings were erected, over the rental, as stated before, $11,000 or $12,000?

A. O, yes; a good deal.

Q. Have you investigated accurately yourself the rental of the property per annum since the erection of the buildings so as to state the exact amount per annum?

A. I have not.

Q. How was the money supposed to be kept for you all; was an account kept with each individual or did it go into one common fund?

A. Into one common fund; all alike; one share with the other, I suppose.

Q. You answered Mr. Cotzhausen that since 1879 and since the settlement with Alexander the account had been kept as before and to be used share and share alike. Among whom was it so to be divided?

270 A. James, Elsie——

DEF'TS' COUNSEL: All but Alexander?

—. Yes; except what we pleased to give him.

Q. Mr. Cotzhausen said you put it all in one pot; how was it to be taken out of that pot?

A. Taken and divided evenly.

Q. Between whom?

A. James, Elsie, Mary, Margaret, and Annie.

Q. What share had or has Alex.?

A. No share.

Q. Why not?

A. Because he used all his own and more than his own.

Q. Who advised Alex., as the lawyer of the estate, if you know, from 1872, when the letters were taken out, until July, 1879, when the check was thrown out?

A. I do not know who did.

Q. You did not know that Mr. Barker was?

A. No; I did not know.

Q. Do you know now that he was?

A. I think he was not.

Q. Do you not know that Mr. Barker was not the adviser in the estate matters after the taking out of the letters of administration on the estate of Mr. White up to a late day?

A. Yes.

Q. When were Barker & Buell engaged first for the estate and for what purpose after taking out the letters for the estate?

A. In 1879.

Q. For what purpose, and why?

A. For protecting the heirs.

Q. How did either member of the firm receive their retainer or engagement, and where?

A. We sent for Mr. Barker. He came to our house, at Dearborn St. We sent for Mr. Barker because the check of Alex. was thrown out. Alex. was not present at the interview.

Q. What did you state to Mr. Barker that you desired done?

A. I stated to him that I wanted him to take the matter into consideration, protect the estate, and settle up the estate.

Q. Did you know the condition of the estate when you sent for Mr. Barker?

A. We did not. I did not.

Q. Had you made any effort to ascertain its condition from Alex. by questions?

A. We could get nothing out of him; that was the reason we employed counsel.

Q. How many members of the family were present and joined in the request to Mr. Barker to investigate into the affairs of Alex.?

Objected to — leading and suggestive.

A. Elsie and myself; I do not think James was at the house.

Q. Was not Mr. Barker at the house a considerable portion of the afternoon in making the investigation?

A. Yes.

Q. After having seen Alex. did Mr. Barker report to you that he had seen Alexander, and what did he report about being able to get money?

A. He reported that there wasn't any. He said, "And it's all your own fault, ladies."

Q. Why did he make that remark, if you know?

Objected to.

A. He thought we should have watched better and not have so much confidence.

Q. How much has Alex. received since 1879 from the other
271 members of the family, if you know? State as near as you can.

A. Well, I can — state exactly; has got it in small sums.

Q. From whom has it been received?

A. From the family.

Q. Why has it been paid to Alex.?

A. For his board; that is one thing; for his clothing. I do not know the amount.

Q. Under what obligations are the family to pay Alexander money?

A. Under no obligations whatsoever; of their free will.

Q. Did you know Mr. Cotzhausen at the time you settled with Alex.?

A. No, sir.

Q. Did you know that Alex. was indebted to Mr. Cotzhausen at that time?

A. I did not.

Q. What knowledge had you, if any, of Alex.'s indebtedness at that time to any one else than the family?

A. None.

Q. Had you not arrived at a settlement with Alex. and had not the amount of his indebtedness to the estate and heirs been ascertained prior to the filing of the petition for partition?

A. Yes. I cannot be sure about that.

Q. Had he not also agreed to pay his indebtedness to yourself and his brother and sisters by conveying his share when set apart to him in liquidation of his indebtedness?

Objected to as leading.

A. Yes, sir.

Q. Was his indebtedness greater or less than the supposed value of his interest in the estate?

Objected to.

A. Greater.

Q. What knowledge had you of the appropriation of the moneys of the estate by Alexander except those used in family expenses and in building the two buildings?

A. No knowledge.

Q. How much money have you received from the notes and accounts or property pledged to you by Alex. to apply on your judgment?

A. Not a cent.

Q. You say in your direct examination that Alex. is stopping at your house. Explain how it happens that he is there now.

A. He has been assisting James in leasing the buildings.

Q. What is Alex.'s profession or business? Where has he been located?

A. He was practicing law, not in any stated place, part of the time in New York. He has never practiced here, except in aiding James to make leases.

Q. What interest has he in the property of which he — making leases for James?

A. None whatever.

Q. What interest has he in the horse and carriage, about which Mr. Cotzhausen inquires, that he has been riding to and from his office in or in any property about the house in which the family now reside?

A. None whatever.

Re-examination by Mr. COTZHAUSEN:

Q. Does Alex. White take his meals at your family table?

A. He has until last Saturday, when he went for a few days to Evanston.

Q. What is he doing at Evanston?

A. He is doing nothing there. He is boarding.

272 Q. Is he rusticating?

Objected to as impertinent.

A. Boarding, I should think.

Q. Have you shown yourself during the last year in public or society in company of your son Alex.?

Objected to as impertinent.

A. I have not much. I have gone to church with him. That is all the society I go in.

Q. Do you discriminate at home or abroad, aside from financial matters, between Alex. and the rest of the children; if so, in what respect?

Objected to.

A. I cannot say that I have the same feeling for him that I have for the rest of the children.

Q. But do you discriminate in your conduct or action aside from your feeling?

Objected to as immaterial.

A. I suppose I do, to a certain degree, more than a mother ought to.
Q. Explain.
A. That is all the explanation I can give.
Q. What caused you to call or permit Alex. to assist in the management and letting of the estate?

Question objected to. Witness has not said that she permitted Alex. to assist in the management of the estate.

A. I did not call him.
Q. Since you say, on the cross-examination, that the rents of the estate were largely increased after putting up the buildings, please tell us how much they were about the years 1875 to 1879.
A. Well, I can't tell exactly how much.
Q. Can you tell us about?
A. I should think about $5,000—more than that—annually.
Q. Is it not a fact that there was but a part of the Fifth avenue building occupied during the years 1877 and '78, and that there was a scarcity of tenants?
A. I believe there was; that is so.
Q. Have you any idea how much rent was derived from that building net of running expenses during 1877 and 1878?
A. I don't know.
Q. What authority had Alex. White to put up the two buildings which you spoke of and to use the funds and credit of the estate, heirs, and yourself for that purpose?

Objected to because witness has not stated that the credit of the heirs and estate were used for that purpose.

A. The family all consented to putting up the buildings.
Q. Who was the contractor?
A. On the Fifth avenue building I think it was McNeill & Sons. As to the other I do not know.
Q. Did Alex. White make those contracts in his own name?
A. I believe he did. Neither I nor other members of the family signed any contracts.
Q. Was Mr. Barker your attorney at that time?
A. No, sir; we left it all to Alexander White.
Q. Do you mean to say that during the early part of 1878 and until July frequent inquiries were not made for Alex. White by creditors of his at your house?
A. Not to my knowledge.
Q. Did not James B. White inform you as early as Feb., 1879, that an attachment had been laid on all the property of the oleograph Co.?
A. I do not remember. I was in the South that winter. I came home in June.
273 Q. Do you mean to say that you were not at all at home until June, 1879? Are you not mistaken in the year? Was it not 1876 when you came home?
A. I am not mistaken. It was the winter of '78–'79 that I was in the South. On refreshing my memory I find I am mistaken; it

was '78 and not '79. In the spring and summer of '79 I was at home. I do not remember, however, that James B. White spoke to me about the attachment.

Q. What was the value of the whole real estate belonging to yourself and heirs at time of partition.

A. I cannot tell.

Q. Please tell us within $100,000.

A. I cannot tell you at all.

Q. What was the supposed value of Alex.'s interest in the estate at that time?

A. I don't know.

Q. To what time does the special agreement date or reach back whereby Alex. agreed to turn his interests over to the family in liquidation of his indebtedness?

A. I cannot mention the date. I don't remember dates well. I cannot tell whether the agreement was in writing or verbal.

Q. What were you to do on his turning over all his interests in the estate or share allotted to him?

A. I was to get out the $42,000 judgment. He gave over some notes that were perfectly worthless to me and the rest he was to turn over to the others.

Q. When did he turn over his remaining interest in the oil paintings?

A. In 1879 he turned them over to his brother and sisters. I do not know how much he was allowed.

Q. Are any of your children married?

A. Not one.

ANN WHITE.

JULY 7TH, 1882.

Complainant introduced ELSIE WHITE as a witness, who testified as follows:

Elsie White. I am the second oldest daughter. I sign the checks, together with my brother James, now and we consult, together with the family, about any money matters or others that concern the estate. This new arrangement has been adopted since 1879. I think in October, but am not positive. I think likely it was July or August when I commenced signing checks.

Q. What was the cause or occasion of your direct interference since that time in the manner indicated?

A. Previous to this time my brother Alex. had the signing of checks, he being administrator. After he ceased having charge of our affairs we (the family) thought it would be better to have two members of the family sign the checks. I being the oldest at home, we thought that I was the one to act with my brother James.

Q. Has James had the whole management of the estate of late years aside from the assistance rendered by yourself, as stated?

A. Yes, with the exception of advice which we have asked from my brother Alex. and other persons.

Q. Have you kept books of late years of all moneys received and expended on account of the estate?

Objected to as immaterial.

274 A. Yes; a memorandum book.

Q. Where are these memoranda?

A. My brother James has them.

Q. Did you ever keep a memorandum of any receipts or disbursements of money, by yourself individually or the family at large, prior to July, 1879?

A. No.

Q. Did any one of the family—mother, brother, or sisters?

A. My brother Alex. may have done so. The others did not.

Q. How much money have you drawn from the estate for individual purposes since 1872 and up to July, 1879?

A. I cannot tell.

Q. Give us a general idea, within a $1,000, more or less.

A. I can give you no idea.

Q. Who can give us some idea, if you are not able to do so?

A. No one that I know of.

Q. How old were you in 1872?

A. 24 years.

Q. Did you always stay at home since 1872; if not, where did you spend your time up to July, 1879?

A. I staid at home while I had one. A portion of this time we have boarded in New York. It was about June, 1876, until September, 1878, I boarded in New York. My sister Mary was with me continually. My mother, brother James, and sisters Mary and Annie were there together until, I think, October, 1877; they then went South. My sister Mary and myself remained in New York. My brother James remained a portion of the winter of 1877 & '8 in Chicago.

Q. Have yourself and mother been in Chicago continuously since Sept., 1878; if not, where did you spend your time?

A. My mother spent the winter of 1880 & 1881 in the South. I spent last winter, 1881 & 1882, in New York. The remainder of the time of both of us has been spent at home.

Q. How much did Alexander owe you individually in July, 1879?

A. I can give no exact figures.

Q. Give me the aggregate figures, as near as your can.

A. I may guess at about $20,000 or $30,000. I am not certain about the figures at all.

Q. How was the aggregate figured and arrived at?

A. We left that entirely to our attorneys, Mess. Barker & Buell.

Q. Can you not give us any idea or basis for arriving at this aggregate of indebtedness?

A. No.

Q. What instructions had yourself or the family given Messrs. Barker & Buell, if any, in relation to the actual or pretended differences between yourselves and Alexander?

A. We gave them no instructions that I remember of.

Q. What advice did they (Barker & Buell) give to you and family in regard to the settlement or adjustment of those differences?

A. They said that as we were all now of age, and in view of Alex.'s embarrassments, we had better have a partition of the estate; that is all.

Q. Nothing further?

A. They said that they advised this because it was the only means of arriving at any conclusions as to the amounts that Alex. had used. It was important for us to know how we stood at that time, financially; nothing further that I remember of.

Q. Who first proposed or mentioned the transfer of Alex.'s interests to the family, and what was said? Give us the details.

275 A. I do not remember.

Q. Give us some idea as to this subject of inquiry. What is the first you ever knew or heard of it?

A. I do not remember when it was mentioned or by whom.

Q. What did you say when the proposition was brought to your knowledge?

A. I said that if our attorneys thought that it was the best thing for us to do they had our consent.

Q. Is that the only part which you took in the adjustment of differences with Alex.? If not, specify what further part you took.

A. That was all the part I took that I remember of.

Q. Did your brother James, or any of your sisters, or your mother, take any more active part in such adjustment than yourself, or did they likewise leave matters altogether to Mr. Barker?

A. They did not take any more active part; they left it altogether to our attorneys.

Q. How were the matters of difference between Alex. and the family finally adjusted?

A. He had no ready money, and therefore turned over to us the property that was set aside for him; we agreed among ourselves that if the amount of the value of the property that he made over to us was not equal to the amount he owed us we would forgive him the rest.

Q. Who made this agreement?

A. We made it among ourselves; Mrs. White (my mother), sisters Mary, Annie C., myself, brother James.

Q. Where was Margaret?

A. She was in Connecticut.

Q. What did she have to do or say to this final adjustment?

A. As far as I remember we (our family) had power of attorney to act for her.

Q. Where is that power of attorney?

A. I do not know, but presume that brother James has it.

Q. Were any writings executed on part of yourself or members of the family in regard to this adjustment; if so, what were they?

A. I do not remember of any papers other than the partition papers and the receipt which we gave my brother.

Q. How much did you and the other members of the family allow Alex. for his interest in the oil paintings, if anything?

A. I do not remember the figures. I presume the papers will show. If I remember rightly, there was a bill of sale at the time of the partition; of this I am not at all certain; don't remember how we settled that.

Q. Did you ever yourself engage in any accounting or figuring with Alex.?

A. Never.

Q. Did you ever execute any written authority or power of attorney to your brother Alex. in relation to the management, control, or investment of your interest in the estate?

A. No, sir.

Q. Has Alex., prior to July, '79, ever consulted with you as to the management of your interest in the estate?

A. The only thing I ever remember his consulting us, the family, was about the erection of the two buildings in this city; nothing else.

Q. How much did the 5th Ave. building cost?

A. I think about $60,000.

Q. How much did the Lake street property cost—I mean the building?

A. I think about $40,000.

Q. How much was subsequently spent on the 5th Ave. building for changes, alterations, elevators, steam power, &c.

276 A. I do not know.

Q. Why do you not know?

A. I have never taken the trouble to look at the bills.

Q. Why not?

A. I thought it wasn't necessary.

Q. Why not?

A. I presumed that whatever alterations were made were necessary for the better renting of the building, and left it entirely to my brothers.

Q. What brothers?

A. My brother Alex., previous to 1879, July; since then to my brother James.

Q. Have you ever been called upon to sign any leases of any real estate since the death of your father, or have all these matters been left to Alex. until July, 1879; to James since?

A. Yes; they have been left to them, with the exception of a ground lease on Lake and 5th avenue. I think the lease was for 90 years. The lease was given about a year ago; have forgotten the date. After the partition I have never been called upon to sign anything else in the form of leases. All others have been signed by my brothers.

Q. How does James sign leases?

Objected to as immaterial.

A. He signs as our agent, James B. White.

Q. In signing his name does he say anything else than James B. White, simply and purely?

A. I do not remember ever seeing anything but the signature simply.

Q. How did Alexander sign leases while he was in charge?
A. If I remember rightly, Alexander White, administrator.
Q. Do you know anything about it?
A. I have seen the leases, but my memory may not serve me rightly as to the manner in which he signed his name. I think it was Alexander White, administrator.

Cross-examination by Mr. BUELL:

Q. What personal property did your father, Alexander White, leave at the time of his death? State the amount as near as you can.
A. I remember we received $60,000 from Mr. Reed that was due on some property we sold him. We received $30,000 from Mrs. Couch, due from the sale of our homestead. We received either $30,000 or $31,000 from the sale of some property on 5th Ave. We had about $35,000 in the bank, making in the aggregate about $155,000 or $156,000.
Q. State, as near as you can, what were the annual expenses of the whole family per year from 1872, the time of the death of your father, up to July, 1879.
A. We don't know what the expenses were.
Q. Did they or did they not exceed $10,000 a year?

Objected to by Cotzhausen on the ground that it is leading.

A. I should think they hardly amounted to that.
Q. Do you or do you not include in that estimate the expenses of the family individually and collectively?
A. I do.
Q. For what purpose, if any, did you draw money from the estate individually during that period?
A. Merely for clothing and traveling expenses. I don't know of anything else.
277 Q. Tell us as near as you can what were your expenses annually for clothing.
A. They did not exceed $500, I know.
Q. On your direct examination you were asked, How much money have you drawn from the estate for individual purposes from 1872 to 1879? You say you cannot tell. You are asked to give a general idea, and you say you cannot give any. Is that true? Can you not give some idea of how much you drew for individual purposes yearly?
A. As I understand that question I thought that I could not give any idea of my individual expenses as one of the family, not knowing how much we expended on family expenses. I know, as far as clothing and traveling expenses were concerned, I never spent $500 a year—I mean individually.
Q. Was Alexander in the habit of consulting with you or with any other member of the family in regard to the management of the funds of the estate?
A. No; with the exception of the erection of the two buildings.

Q. Did he consult with you or any other member of the family in regard to the renting of the real estate or the disposition of the rents received by him?

A. He did not.

Q. What was the occasion or cause of your consulting with your attorneys in 1879, and with whom did you consult?

A. We found we had no money in the bank, and, not receiving a satisfactory explanation from Alexander, we sent for Mr. Barker to ask him to assist us in investigating the matter.

Q. Did you or did you not take his advice?

A. We did.

Q. Did you and the other members of the family approve of what he did in connection with the settlement of the estate and in connection with the settlement between Alexander and the other heirs of your father?

A. We did.

Re-examination:

Q. How much per year did your mother use individually from 1872 to 1879?

A. I should say for travelling *and* expenses and clothing she must have used a little over $500 a year.

Q. How much your sister Margaret?

A. I do not know; it would include some boarding expenses, of which I can't give you any figures. For clothing I think she must have used less than $500 per year.

Q. Your sister Annie C.?

A. She probably did not use over $300 or $400.

Q. Your brother James?

A. I cannot tell what his school expenses were; his clothing expenses, I should think, would not amount to $200.

Q. How much were his other individual expenses, on the average, per year?

A. I cannot tell any more than as to the others, meaning I cannot tell his proportion of the living expenses of the family.

Q. I want to know what, on the average, James used from '72 to 1879 per year for spending money and individual expenses, outside of schooling and clothing? If you know, say so.

A. I know that he never spent $100 per year.

278 Q. How much did Alexander use for individual expenses, on the average, per year from '72 to '79?

A. I can give you no idea.

Q. Has no account been kept whatever in the family of what every one used individually?

A. None, up to 1879. I have kept a memoranda since then, not itemizing general expenses, but showing an aggregate of individual expenses; I have stopped keeping it now; have not kept it since last September, on account of going out of town; since then James kept it.

Q. Where is that memorandum kept?

A. In Brother James' office.

Q. Your mother has testified, in substance, that since her husband died the arrangement in the family has been to defray all expenses from the estate and common fund, to keep no separate accounts, although one may use more than the other. Is that true?

A. Yes; it is true.

Q. Has that been the arrangement all the time?

A. Yes.

Q. What was the reason that neither yourself nor other members of the family ever called on the administrator for an accounting or a division of the estate until the summer of 1879?

A. We had every reason to believe that the estate was being managed properly.

Q. Who were the sureties of your brother Alexander as administrator?

Objected to; records of court are best evidence.

A. I do not know that there were any.

Q. When was the property on 5th avenue sold to which you referred as having yielded from $30 to $31,000?

A. It was sold before my father's death, but payment not made until after; I think some insurance company bought it; the property adjoined the alley next to No. 83 to 87, 5th Ave.

Q. When was the property sold to Reed, on account whereof you received $60,000?

A. I don't know; it was sold before my father's death.

ELSIE WHITE.

Mary S. White.

Complainant introduced MARY S. WHITE as a witness, who testified as follows:

I am one of the defendants.

Q. How much did Alexander owe you in July, 1879?

A. In the neighborhood of $15,000.

Q. How do you figure it?

A. I reckon what he owes the entire family was in the neighborhood of $100,000; so divided it.

Q. How do you get at the $100,000?

A. I had heard that figure mentioned—not that figure, but it was in the neighborhood—by my mother, in 1879.

Q. Have you any other knowledge about it?

A. No; I have not.

Q. What did he owe you that money for?

A. For what he used of ours.

Q. Tell us all you know about it.

A. That's all I know about it—simply that he had used money of ours.

Q. Has he given it back to you since?

A. Yes; he has given it back to us in property; it was in 1879, as I remember; that's all I know about it.

Q. Did he consult with you or any other member of the family in regard to the renting of the real estate or the disposition of the rents received by him?

A. He did not.

Q. What was the occasion or cause of your consulting with your attorneys in 1879, and with whom did you consult?

A. We found we had no money in the bank, and, not receiving a satisfactory explanation from Alexander, we sent for Mr. Barker to ask him to assist us in investigating the matter.

Q. Did you or did you not take his advice?

A. We did.

Q. Did you and the other members of the family approve of what he did in connection with the settlement of the estate and in connection with the settlement between Alexander and the other heirs of your father?

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Q. Tell us all you know about it.

A. That's all I know about it—simply that he had used money of ours.

Q. Has he given it back to you since?

A. Yes; he has given it back to us in property; it was in 1879, as I remember; that's all I know about it.

279 Q. What was that property worth?

A. I do not know what it was worth and I do not know where it was.

Q. Who attended to the matter for you?

A. My lawyer, Mr. Barker.

Cross-examination:

Q. Did you approve of what Mr. Barker did?

A. Yes.

MARY S. WHITE.

Ira W. Buell.

Complainant then introduced IRA W. BUELL, a witness, who testified as follows:

I am a lawyer by profession; I am one of the counsel for the defendants in this case; I was employed by James B. White on behalf of himself and the other defendants about two weeks ago.

Q. Were you a member of the law firm of Barker, Buell & Barker in 1879?

A. I was.

Q. Did you at that time become familiar with the matters of difference between Alexander White, of the one part, and his creditors, of the other?

A. To some extent I did.

Q. Did you have charge of those affairs, or what member of your firm attended thereto?

A. I had charge of them partially, but Mr. J. N. Barker more particularly and intimately than myself—that is, so far as the indebtedness of Mr. Alexander White to the estate and to the heirs of his father was concerned. The business was done by the firm of Barker, Buell & Barker.

Q. Were you, at or about this time, personally called upon by Alexander White or members of his family for advice and professional assistance in relation to such differences or was such advice and assistance confined to J. N. Barker?

A. The personal advice and assistance which I rendered was for the brother and sisters and mother of Alexander White; I had personal interviews with some of them—James and Elsie and Mrs. Ann White. I gave no advice or assistance to J. N. Barker as an individual nor otherwise than one member of a law firm assists another in business about which the firm is employed.

Q. I want to know whether you personally advised the White family or had personal charge of any part of their business at that time?

A. My recollection is that I did advise personally with James B. White, Elsie and Mrs. Ann White, also with Alexander White, and that I personally had charge of the proceedings instituted for partition of the real estate between the widow and heirs of Alex. White.

Q. When did you become a member of that law firm?

A. May 1st, 1875, and continued until May 1st, 1879. So far as new business was concerned, the business already commenced was to be closed up by the members of the firm as partners.

Q. Did the law firm keep regular books of account while you were a member?

A. They kept books somewhat regular, somewhat irregular; they kept the usual books kept by lawyers; they were kept chiefly by Frank Barker, the junior member of the firm, but sometimes I made entries, sometimes Joseph N. Barker; the latter very seldom.

Q. Are those books still in existence?

280 Objected to as immaterial and irrelevant.

A. They are in existence and with J. N. Barker.

Q. Do those books show the time when and for whom your law firm became engaged and acted as attorneys?

A. I am not positive that they will. I presume that they will. They will show, I think, when the proceedings for partition of the real estate were instituted, and the proceedings in the cause, and, probably, when the accounts of Alex. White, as administrator, were proved, and probably there will be a charge on the books for services rendered to the heirs of Alex. White. The books themselves are better than my recollection as to what they show.

Q. Is there any objection to allowing me an inspection of your account books and the entries therein relating to members of the White family from 1875 to 1879 under your immediate supervision?

Objected to as immaterial and irrelevant.

A. I have no objection personally.

Q. If you have no objections, Mr. Buell, can you procure for complainant's counsel such inspection or verified transcripts of all that appears upon said books and appertains to the White family and is not confidential?

A. As those books are in the custody of Mr. Barker, I shall need first to consult with him and obtain his consent, but I presume there will be no difficulty in the matter.

Cross-examination by Mr. BARKER:

Q. Were you not individually retained by Mrs. White, Miss Elsie White, and James B. White, with J. N. Barker, to attend to making this settlement with Alex. White?

A. I will say that those three parties consulted with me in regard to that settlement, and I was employed, along with Mr. Barker, in their behalf and in behalf of the other heirs of Alex. White, deceased. I believe Mr. Barker and myself were partners at that time.

Q. Did it not take considerable time and labor to effect such settlement?

Objected to because not cross-examination and involving an inquiry into professional conduct and relations that will necessitate extended re-examination and research, against which the privilege of counsel cannot afterwards be invoked.

The question is insisted upon, and witness answers:

A. It did.

Q. Did J. N. Barker report to you consultations with Mrs. White, James B., Elsie, and other heirs as to their claim against Alexander White, and confer with you from time to time in relation thereto?

A. My recollection is that he did.

Q. When it came to the preparation of papers pertaining to said matter in court and the deeds conveying the property to the mother, brother, and sisters of Alex. White who prepared them?

A. I think I made the original drafts of all of them except the report to the probate court of Lake county, including the deeds.

Awaiting an examination of said books, the examination of this witness is for the present suspended.

JULY 13TH, 1882.

Examination of IRA W. BUELL resumed:

281 Q. Have you since the adjournment conferred with J. N. Barker as to the production of the account books of the former firm; if so, what conclusion have you reached?

A. I have had some conversation with him about it, and he does not object to Mr. Cotzhausen examining the books as to the accounts of the Whites.

James B. White.

Complainant then introduced JAMES B. WHITE as a witness, who testified as follows:

I am 25 years old; I will be 25 December 30th, 1882. I am a single man; am living with my mother and sisters.

Q. Does your brother Alexander and yourself occupy an office with Mr. J. N. Barker in the McCormick building, in Chicago?

A. I rented an office from Mr. Barker, and when my brother is in the city he makes his headquarters there. I pay ten dollars per month rent.

Q. Is that the same office which your brother occupied prior to the partition of 1879?

A. No, sir.

Q. State the difference.

A. My recollection is that he had an office in the 5th Ave. building until some time during 1879; I think in the spring.

Q. When was the office at Barker's first rented?

A. In May, 1879; no written lease. It was not prior to the partition; it was prior to his accounting as administrator.

Q. Is it not a fact that the office was first rented by Alexander White and not yourself?

A. The office was rented by me.

Q. State the circumstances how you came to do so.

A. I was about to take charge of the estate affairs and I required an office to transact the business of the estate—that's all. Mr. Barker said he had an office or desk-room he would rent me, and that

was about as cheap an office as I could get—$10 per month—so I took it.

Q. Where did Alexander White make his headquarters between May and the time he went East?

A. I don't think he had any particular headquarters.

Q. Did he make use of your office?

A. My recollection is that he occasionally did. I don't know of any other which he occupied.

Q. Where did Alexander, during this time from the spring of 1879 to the time he went East, sleep and board?

A. At 486 Dearborn Ave.; at our home—the family home.

Q. When did you assume the collection and payment of matters and things belonging to the estate? Give us the date.

A. August, 1879. Until that time, I think, I attended to the matter partly, and my brother also; but it was not until Aug., 1879, that I took entire charge.

Q. What did you attend to prior to August, 1879.

A. I collected the rents from the tenants; I think from all of them. I commenced collecting, I believe, in June, 1879.

Q. How much did you collect and from whom?

A. I can't say without looking at my accounts.

Q. What did you do with the money so collected?

A. I am not positive whether it was deposited or used in defraying the family expenses without being deposited first.

Q. Deposited in whose name and where?

A. If it was deposited it was in the Traders' Bank of Chicago, in the name of—I don't know whether it was the estate of Alexander White, deceased, or Alexander White, administrator.

282 Q. Who made such deposits?

Objected to because he assumes that the witness has stated that somebody made deposits.

A. I couldn't tell you, as I don't remember that there were any made.

Q. I desire to know what you did with the rents so collected; if you do not know say so.

A. I don't remember.

Q. Did you pay them over to Alexander?

A. I don't remember that.

Q. Did you pay them over to any other member of your family?

A. I think I did, but I don't remember if they were all paid over. My recollection is that I did pay them over to my mother. If I did not pay them all over the rest was probably deposited in the bank.

Q. What was the total aggregate of rents by you collected prior to August, 1879?

A. I couldn't tell without looking up my stubs in the receipt book which I used while collecting the rents. Prior to August, 1879, the receipts were given in my name.

Q. How did you come to do so?

A. For the simple reason that I received the money; so I signed my own name.

Q. From whom had you derived your authority for doing so, and collecting rents as aforesaid, prior to August, 1879?

A. I don't know that I received any particular authority; the family knew that I was collecting them; that was sufficient.

Q. Have you continued the management of this estate ever since that time in your own individual name?

Objected to because the question assumes that there was an estate, when the evidence shows that there was a partition and the property had been divided among the individual owners.

A. Since then I have managed the property belonging to the heirs of Alexander White, deceased, as set apart to them in the partition proceedings. Sometimes I signed receipts in my own individual name and other times as agent, and I have signed as attorney-in-fact. I have a written power of attorney from, I think, all my sisters, since different dates; I don't remember the dates. The first power of attorney was given me, I think, in July or August, 1879, by my sister Mary, who was absent in the East. The next—I since received the powers of attorney from my other sisters, but I have no recollection of the dates.

Q. What was the occasion of their giving you written powers of attorney?

Objected to as immaterial.

A. One was the settlement of a fire loss in fall of 1881; another in—well, they were given, I think, as the parties were going away, and in case any property was sold it might be necessary to have a power of attorney.

Q. Do you keep a bank account for the family or various heirs?

A. I do; in the name of James B. White and Elsie White individually; no addition to these names.

Q. How have you signed the leases of the 5th Ave. building since 1879?

Objected to.

A. I signed them in my own name.

Q. How do you come to do so?

Objected to.

A. Because the title is in me since July, 1879.

Q. To whom does it in fact belong?

Objected to.

A. I believe that property was set apart to myself and three
283 sisters, subject to my mother's dower right; the decree will show.

Q. To whom does it in fact belong?

A. The decree will show that.

Q. How came the title to be conveyed to you?

Objected to as immaterial.

A. In making a mortgage in 1879 on the building. It was put in my name simply for convenience sake.

Q. How have you signed the leases of the other property belonging to your mother or the heirs of the estate?

A. Most of them in my own name.

Q. How did you come to do so?

A. There was no particular reason; never thought anything about why I should do it.

Q. In whom is the title to the other property outside of the 5th Ave. property—83 to 85?

A. The decree will show that; the decree in the partition proceedings.

Q. What property, if any, does now of record stand in the name of your mother?

Objected to as immaterial.

A. I don't know. Whatever there is the decree in partition will show.

Q. Has your mother executed any deeds or conveyances to any portion of the property set off to her?

Objected to as immaterial.

A. She signed a deed together with my three sisters when the 5th Ave. building was transferred to me; that's all.

Q. Has she made any other or different disposition, by deed or other writing, over any of the property set off to her on such partition or settlement of the estate in probate?

Objected to as immaterial.

A. No, sir.

Q. Has there, ever since you have charge of these various family interests, any discrimination been made between the parties therein interested or in the receipts and charges appertaining to particular tracts or has the whole interest been united in one common account?

Objected to as immaterial.

A. The rents had been collected from the various pieces of property and deposited together as a whole. The charges of the particular tracts have been met in the same manner and out of the same common fund; individual expenses of family likewise.

Q. What was the object of the partition suit?

A. It was begun because the family all desired it. At the time it was commenced there was a general feeling that we would like to have it divided; that was the beginning of it; don't remember the object why it was commenced, except we wanted it so.

Q. Is that the best explanation you can give as to its object?

A. Yes.

Q. In what condition did you find the estate when you took charge of it?

A. I found it several thousand dollars in debt for back taxes and with a balance in the bank of $335 and a note held by the bank—two notes of $500 each.

Q. Is that all that as to the condition of the estate at that time you find worthy of note?

A. That's all I can think of.

Q. Give me the amount of taxes and what for, as near as you can.

A. The taxes of 1873, 1874, 1877, and 1878 were then due on all the properties. Some of the property had been sold for taxes and had to be redeemed by paying a large percentage, the total amount amounting to about $30,000 altogether. Some of these
284 taxes—nearly all—had been contested on the ground of illegality with various success. All, however, were reassessed and ultimately collected.

Q. Was Mr. Barker the attorney of the estate in contesting the legality of said taxes or any part thereof?

A. I don't know.

Q. When did the family decide to desist from further contest and take up those taxes?

Objected to as immaterial.

A. I don't remember of the family ever deciding. I know that we considered them due in 1879 and we paid them then.

Q. Whose notes were those in bank—$500 each?

A. They were signed by my brother as administrator. They——

Q. When were they given?

Objected to.

A. The spring of 1879, I believe. I have the notes yet on file at the house. I suppose my brother got the money on these notes from the bank. I do not know what the money was used for.

Q. Did you take up and pay these notes; if so, why?

A. I did. I don't remember the reason. We thought it advisable to do it.

Q. Why?

A. I said I did not — why—what for.

Q. What other debts, notes, or obligations contracted by Alex. White while he was in the management of the estate did you take up or assume?

A. A note of Lazarus Silverman of $1,089.76, on Aug. 7, 1879, given for money borrowed by Alex. White. I don't remember how it was signed.

Q. Why did you take up and pay this note?

A. I don't remember the reason.

Q. Who told you to do so?

A. I don't recollect that anybody told me. I do not know what was done with the money borrowed on that note. The next is a note of $2,080, including interest, which I took up Aug. 19, 1879, given by my brother, myself, and two of my sisters to L. C. P. Freer. It was represented to us that it was to pay the expenses

belonging to the estate. I do not know that the particular nature of the expenses was stated to us by Alex. The note, I think, was for six months. Myself and sisters signed it at Alex.'s request.

Q. What was the reason or occasion of his requesting you and — two sisters to join him in this note?

A. I suppose because Mr. Freer required it.

Q. Why were such expenses not met in cash or by Alex.'s individual note?

A. I don't know. I never asked him at that time.

Q. The next debt, note, or obligation?

A. On Oct. 6, 1879, we took up a note of $2,140, including interest, given to James Smith by my brother, myself, and two sisters, given for a year, in Oct., 1878, for same reasons as the Freer note.

Q. What were the reasons or occasion of your joining in this note; why was the obligation not discharged in cash?

A. I suppose Mr. Smith required our names. We did ask questions about it of my brother, what he wanted it for. He said he wanted to use — to pay debts of the estate. We had confidence in him, so we signed the note. No further questions were asked nor explanation given.

Q. Any other debts, notes, or obligations?

A. That's all.

Q. What was the income of the estate from month in the fall of 1879 when you assumed charge, including all regular re-
285 sources? Look at your memorandum book and then answer.

Objected to.

A. $16,000 per annum.

Q. Give us the details by aid of your account book.

A.—

Washington St. property	$8,000	per annum.
Lake St. "	2,480	"
83 to 87 5th Ave. " about	4,000	"
Farm (160 acres), town of Rich	350	"
Lincoln St. cottages 43, 45, & 47 & 49	720	"
Nos. 113, 115, 117, & 119 N. Peoria St. cotta.	576	"
40 acres in town of Lake	150	"
40 " " Jefferson	40	"
	16,326	

Q. Give us the details of rents per year derived from all the property at present.

Objected to as immaterial.

A.—

Washington St. property	$8,000	per annum.
Lake & Franklin "	5,900	"
83 to 87 5th Ave. "	13,000	"
160 acres, town of Rich	400	"

Lincoln St. cottages 43 to 49	1,200	per annum.
113 to 119 N. Peoria St. (outside of rep.)	480	"
40 acres in town of Lake	160	"
" " " Jefferson	70	"
Lake & 5th Ave.	750	"
	$29,960	

There is also some dock property in Green's South Branch addition that was let about 1880 for five years, the tenant paying his rent by building a dock.

Q. How much rent did the American Oleograph Company owe for its premises in 83 to 87 5th Ave. when you assumed charge?

Objected to.

A. About ten months' rent. This has never been paid and no part of it. We got some chromos by distress warrant for rent. We got the chromos in the fall or winter of 1879 & 1880.

Q. Did you collect any rents aside from this distress warrant from the American Oleograph Company?

A. That is all I ever got out of them. The Oleograph Co. remained in the building from October, 1878, to about November, 1879, when it was succeeded by the Chicago Lithograph Company. The amount of the Oleograph Co. per month was $90 any way, perhaps more, without steam.

Q. What was the reason that you did not insist upon the payment and prompt collection of rents from this company?

A. Well, I did try to collect it, but I couldn't get it, so I took what I could get. In the distress sale I bid in the chromos for less than $300; have got most of them yet; sold some.

Q. How much, please tell me by aid of your accounts and books, has been paid Messrs. Barker & Buell out of your family fund for legal services and assistance, and particular times when?

Objected to as immaterial.

A.—

Ira W. Buell, Oct. 10, 1879 (partition expenses)	$500 00
Joseph N. Barker, Oct. 22, 1879 (partition expenses)	300 00
Ira W. Buell, March 1, 1880, " "	250 00
Joseph N. Barker, March 6, 1880, " "	300 00

I have continued my research throughout the first year, Aug., 1879, to Aug., 1880, and find no more on the book.

Q. Who is meeting the expenses of the present litigation?

A. We are meeting them out of the family fund.

Q. Do you recollect in the spring of 1879 when Tenny & Flower, on behalf of Cotzhausen, caused the presses and other property
286 of the American Oleograph Company to be attached?

A. I remember of there being a custodian placed in there.

Q. Was this not done in an attachment suit brought by Cotzhausen against your brother, Munson, and the company?

A. I do not remember in what suit.

Q. Were not about this time a number of inquiries made from you by Mr. Thurber, Munson, and the sheriffs as to the whereabouts of your brother Alexander; and, if so, what did you say?

A. I remember on several different occasions—I don't know if it was this particular time or not—inquiries were made by the sheriffs as to the whereabouts of my brother. I think at each inquiry he was East, and I told them so. As for Mr. Munson and Thurber I haven't any recollection of their making inquiry.

Q. Did the deputy sheriffs about this time inquire for Alexander at your house?

A. I believe there was one on one occasion inquiring at the house; whether it was at this time I cannot say.

Q. Did you about this time and during the absence of your brother not make the office of the American Oleograph Co. your headquarters while down-town?

Objected to.

A. I did, I think, up to the spring of 1879; perhaps during a part of the spring.

Q. Did you not get a portion of your mail at that office until about May, 1879?

A. I did get my mail at that office, but I hardly think it was as late as May.

Q. Did you not assume to represent the interest of your brother in that business, more or less, while the oleograph company was doing business at Chicago and while your brother was absent, and did you not occupy part of the office in that capacity?

Objected to.

A. I did not represent my brother's interest; neither did I know what it was. I occupied no particular part of the office.

Q. By what right did you occupy said office?

Objected to.

A. I was there at the request of my brother. He had requested me to remain in the office, although I did nothing in particular. He said my presence would be a relief to him. That's all.

Q. Did you obey orders and ask no further questions?

Objected to because he assumes orders were given.

A. There was no questions to be asked. At first I refused to stay there, but he persisted so long and said that it would be a great accommodation to him, as he felt that he must have somebody whom he was well acquainted with to be in the office, even though they did nothing but sit there.

Q. And watch?

A. I suppose that was the idea.

Q. Did you watch?

A. I didn't watch particularly.

Q. Did you inform your brother that a suit had been commenced and a custodian had been put in, and what did your brother respond thereto?

Objected to.

A. I have no recollection of ever corresponding with him in any way in regard to the affairs of the company.

Q. Did you personally confer with your brother about it?

A. No, sir; I did not.

Q. Why not in writing or personally, as you were charged with the duty of watching?

Objected to.

A. Because I knew nothing of the affairs of the company
287 and I took very little interest in their interests.

JULY 14TH, 1882.

Examination of JAMES B. WHITE continued:

Q. When did you first go to Milwaukee and enter the business of the American Oleograph Company?

A. About August, 1878, I went to Milwaukee.

Q. Had you not been there as early as the spring of 1878?

A. I had not. I stayed at Milwaukee two or three days; then returned to Chicago, and then again went back two or three days later and stayed until the business was moved to Chicago. That was, I think, in September, 1878.

Q. While at Milwaukee where did you board?

Objected to.

A. First few days I was there I boarded at a private boarding-house; don't remember the name of the place. On my return I put up at the Kirby House.

Q. How much money did you draw from the American Oleograph Company while at Milwaukee?

Objected to.

A. Mr. Thurber gave me about $10 or $15; don't know if Thurber was secretary or not; am not positive it was $10 or $15; not more than that.

Q. What for?

Objected to.

A. Because I asked him for it.

Q. By what right?

Objected to.

A. When I went up there my brother told me the company would pay my board, and if I wanted a little money occasionally to ask them for it.

Q. Did the company pay your board?

Objected to.

A. They did.

Q. Did you receive any letters from your brother and oral instructions as to the removal of the presses and business to Chicago?

Objected to.

A. I believe that the moving of the business was left to Mr. Thurber, and I haven't any recollection of having received any written or oral instructions from my brother.

Q. What for did you go to Milwaukee and enter this business?

Objected to.

A. In August, 1878, my brother told me that he had an interest in a lithographic establishment in Milwaukee, and, as I was doing nothing at the time and as he considered it a good business, he thought it an excellent opportunity for me to learn — business. I looked upon it favorably and went up there.

Q. Had you assisted your brother at or prior to this time in any part of the management of the family estate?

A. I had not.

Q. From whom had you been in the habit of drawing the moneys by you needed for personal expenses?

A. From my mother.

Q. Did you go to Milwaukee with your mother's consent?

A. I don't remember of having asked her consent; neither do I remember of her having objected to my going.

Q. Give me the date in August when you first went up there.

A. I do not remember the date.

Q. Did you assist in overseeing the removal of the business to Chicago in connection with Mr. Thurber?

288 A. I did. The business was moved directly into 83 & 87 5th avenue. The whole upper floor and the west half of the third floor of the building had been fitted up for this business—factory and office.

Q. Had not also a steam-engine and boiler, elevator, and other necessary apparatus, such as shafting, pulleys, &c., been put in by the estate for purposes of this business in the course of the preceding summer?

A. An engine and boiler and elevator had been put in for the use of the American Oleograph Company and for the use of any other tenants who might occupy the building. As to the shafting, pulleys, &c., used by the American Oleograph Company I am not aware at whose expense they were put in.

Q. Did you bring those joint notes with you which you spoke of yesterday?

A. I did not think of it; was not requested to.

Q. Give us the names of your two sisters that joined in those notes.

A. I believe it was Annie and Mary.

Q. Why not the others?

A. One of them was East (Margaret). I do not recollect whether Elsie was East or not. I do not recollect the reason she did not sign together with the others.

Q. Why did your mother not join?

A. The same reason that I gave for Elsie.

Q. There was, then, no particular reason or objection on their part, as I understand you?

A. None that I know of.

Q. Were any of these notes so given by yourself, brother, and sisters ever prolonged or extended?

A. I think not.

Q. Did you or your sisters conceal the execution of these notes and circumstances attending the same from your mother?

A. I can't remember that we did.

Q. What did your mother and sister Elsie say as to these notes?

A. I haven't any recollection of what they said.

Q. Did they or any of them ever object to assuming payment of the notes so given as a proper obligation of all of them?

A. They never made any objection.

Q. What became of your home in Lake Forest?

Objected to as immaterial.

A. It was sold to H. M. Thompson in the spring or summer of 1876 for part in land and part in note—$5,000 in note, I believe, or judgment. The details I know but very little about.

Q. What was the reason it was sold?

A. Because we all wanted to sell it, as we didn't care to live there in Lake Forest, Ill. We didn't like the place.

Q. Did you just now hear your counsel say that it was an elephant, and is that true?

Objected to as immaterial.

A. I heard my counsel say that it was an elephant, but whether it was sold for that reason I don't remember.

Q. Who signed the deed or deeds?

Objected to.

A. I presume the family.

Q. What became of the purchase price or consideration.

A. Most of the land taken in exchange was, without knowledge of any of the family, mortgaged by Brother Alex., all of which property so mortgaged was foreclosed and taken for the amount of money loaned on. The balance now belongs to my mother, and came to her at the time of the settlement of the note or
289 judgment taken of $5,000. Mr. Barker decided that the land which was taken in settlement of said note should be placed in my mother's name.

Q. Why?

A. I don't know. It was left in the charge of our attorney. The deed was given to my mother, some time during 1880, by Robert McClelland, against whom the note or judgment ran.

Q. In whose name had the consideration or securities received on sale of homestead been taken and placed of record?

A. I am not positive, but think it was in my brother's name.

Q. Why?

A. I do not remember.

Q. Had he been acting for all of you in such and similar matters?

A. This is the only matter of the kind I know.

Q. Did any one of the heirs object to title being taken in your mother's name to the lands that came from McClelland?

Objected to.

A. No, sir.

Q. Why not?

A. Because they considered that was a proper way to have it done.

Q. Who is paying the taxes on said lands last mentioned?

A. I pay the taxes from the common fund.

Q. Please look at your account book of receipts and disbursements appertaining to the estate while you have had charge of it and tell us how much has been paid to Alexander or for his use since the date of opening said account, July 31st, 1879.

A. Oct. 25, 1879.	A. White, tuition law school	$100 00
Dec. 2, 1879.	A. White	30 00
Dec. 19, 1879.	A. White and N. S. White	100 00
M'ch 13, 1880.	Draft on New York, order of Alex. Ross	50 00
M'ch 20, 1880.	Draft on New York, A. White	85 00
Sept. 30, 1880.	A. White	200 00
Oct. 29, 1880.	A. White's tuition law school	100 00
Nov. 4, 1880.	D'ft on N. Y., A. White	53 75
Nov. 11, 1880.	C. A. Burt, d'ft on N. Y. (dental serv. A. W.)	130 00
Nov. 27, 1880.	P. O. order to Alex. White	100 00
Feb. 4, 1881.	" " N. Y. to Alex. White	50 00
M'ch 24, 1881.	Draft " " " "	50 00
Apr. 23, 1881.	Order on New York, Alex. White	50 00
June 22, 1881.	" " " " " "	50 00
Aug. 1, 1881.	Draft " " " " "	100 00
Dec. 8, 1881.	" " " " " "	50 00
Dec. 31, 1881.	" " " " " "	80 00
Jan. 24, 1882.	" " " " " "	50 00
Apr. 19, 1882.	Exchanged checks with Alex. White	200 00
		$1,628 75

The amounts so given will be found in my books. The entries in the books were made by my sister Elsie up to Sept. 5th, 1881; since that time by myself. While Elsie kept the book all the above items were charged to Alex. and also personal expense account. Dec. 8th is charged to Alex. White; Dec. 31st is charged to Alexander White; Jan. 24th is charged to Alexander White; April 19th is charged to Alexander White.

Q. Give us the language in which the items entered by your sister appear upon the book, and pick out for illustration any two that you please.

A. Here is one:

"Oct. 25th, 1879. To A. White, tuition law school, personal estate expense account, check 70---$100 00."

"Sept. 30, 1880. To personal estate expense account, A. W.---------- 200 00."

"Aug. 1st, 1881. To personal expense account, draft on N. Y., Alex. White, check 560-------- 100 00."

290 Q. Do not all the entries made by your sister appear to be made and charged substantially as illustrated above?

A. They do.

Q. Why is it that you commenced to change this mode of entry which had been continued for several years?

A. I had no particular reason. My idea was to keep my brother's account separate from the regular family expenses, and I thought it necessary to put in personal when his name was used, and inserted opposite the amount. I never conferred with Mr. Barker about it.

Q. What other amounts outside of those shown on the books to Alexander White have been paid out for his use or in his behalf?

A. Well, the only amounts paid out were what his dinner and lunches came to while here in Chicago and other small amounts, such as car fare, and his expenses while in Evanston for a few days.

Q. To whom were all these expenses last named charged?

A. As the amount was very small I made no separate charge of them.

Q. What do you hold against or from Alexander White to show for the moneys received as above detailed outside of the memorandum book now exhibited, kept by your sister and yourself?

A. Nothing.

Q. What does personal estate expense account on your books referred to and include?

A. It refers to the expenses of the family, both personal and household.

Q. Is there any other or separate account kept on your books as to what the one or the other of the family uses or ought to be charged with?

A. None but my brother's account.

Q. Is there any entry or entries on this account book now before you or any other kept for that purpose showing, by way of journal, ledger, or otherwise, anything more than the entries as above detailed?

A. No; there is not.

Q. About how much has your sister Margaret used since August, 1879?

Objected to.

A. I should think about $4,000.

Q. Will you please give us the details by your book?
A.—

Oct. 20, 1879, $780, H. W. Buell, from Jan. 6, 1879, to Oct. 6, 1879, for board from Jan. 6, 1879	$780 00
June 16, 1880, to H. W. Buell, personal expense, check 230	530 00
Oct. 2, 1880, H. W. Buell, draft on New York, personal estate expense, check 293	260 00
Dec. 20, 1880, H. W. Buell, personal estate account, draft on New York, check 365	266 72
M'ch 28, 1881, H. W. Buell, draft on N. Y., bill from Oct. to Jan., 1881	260 00
Dec. 1, 1881, to H. W. Buell, draft on N. Y., for Maggie's board, etc., check 634	910 00
M'ch 16, 1882, H. W. Buell, draft on N. Y., Maggie's board from Oct. 3, 1881, to Jan. 2, 1882	390 00
Expenses of trip to N. Y.	7 00
	$3,396 72

That is all that appears on the books.

Q. Did your sister Margaret spend her time East, paying for her board and lodging?

A. Yes.

Q. How much do the books show to have been drawn or used by yourself for personal expenses during the same period of time?

A. All my expenses are included in the personal family expenses, and I cannot separate them.

291 Q. About how much were your personal expenses aside from your board and lodging during the same period of time?

Objected to.

A. I don't think over $50 a month during this time.

Q. How much were the personal expenses of your sister Elsie aside from her board and lodging during the same period of time?

Objected to.

A. I couldn't say.

Q. Give us some idea; the best you can.

A. I have no idea, but I will make a guess; all the way from $300 to $500 a year.

Q. Did the other sisters use any more or less than Elsie?

A. Probably Mary used more, taking singing lessons. Annie, perhaps, used less than Elsie, for she was at home more.

Q. What have been the average expenses of the family for household personal account, traveling, etc., during the year last past, including mother, sisters, and brothers?

Objected to.

A. Including everything, rent or household expenses, personal, I presume between $7,000 and $8,000.

Q. Have you ever figured up with Alex. how much he owed in the aggregate to the family or its several members in or about July, 1879; and, if so, how was the amount figured and ascertained?

A. I figured up in the summer of 1879 with Alex. If I remember rightly, there was something over $120,000. I cannot remember the way it was figured.

Q. Have you got access to any figures or statements in that behalf by you made or prepared?

A. I never preserved the figures; the administrator's report will show.

(Turning to Mr. Buell, the witness asked:) Won't it?

Mr. Buell replied: Part of it.

Q. Give us, in the absence of your figures as then made, your best recollection how the amount was ascertained and arrived at.

A. As near as I can remember, my brother's receipts during his administration, together with what was in the bank at that time, amounted to over $300,000. After deducting the family expenses, taxes paid by him, necessary repairs, and the cost of building Fifth avenue and Lake street buildings he was found to be in debt to the other heirs something over $120,000.

Q. Who was charged with figuring and ascertaining on behalf of the family?

A. There were two parties, I think—Mr. Driesslein and Joseph N. Barker. Mr. Driesslein is a stenographer and general accountant at the Union building in Chicago.

Q. Did your family ever acquire or purchase from Alex. White his interest in the oil paintings remaining on division of estate; if so, when, how, and for how much?

A. He gave us his interest in them as part payment for what he owed us; in the summer of 1879 it was. I do not remember the consideration.

Q. Did you get any bill of sale or other writing from him at the time or subsequently covering these paintings?

A. In the summer of 1879 he gave us a bill of sale for his interest in the paintings.

Q. What was the consideration therein expressed?

A. I do not remember.

Q. Will you please produce that bill of sale?

A. I haven't it with me; it is in my office, in the vault; I will bring it with me to-morrow morning; also the joint notes.

292 Q. Do you know of any property, real or personal, that Alex. had left in the summer of 1879, outside of his clothing and personal utensils, after making the several transfers to yourself, sisters, and mother; if so, what was it?

A. He left no property, either real or personal, that I know of.

Q. Did yourself, sisters, and mother or any of you give Alexander White any writings, obligations, receipts, or other written acknowledgements when he made the several transfers to you; if so, what were they? Specify.

A. Myself and three sisters, Mary, Elsie, and Annie, gave my brother a receipt, signed by us all, in full of settlement of the amount he owed us.

Q. Did not your mother join in this receipt, and is that not the receipt filed in the probate court?

A. That is not the receipt filed in the probate court. I believe my mother gave him a receipt, but think it was separate from ours; don't know whether at the same time.

Q. How much was the estimated value of Alexander's interest in the whole real estate transferred to yourself and sisters when such conveyances were made?

A. It was estimated at about $70,000—by three commissioners—in the partition suit.

Q. What is the interest so conveyed worth now?

Objected to.

A. I don't know.

Q. Give us your best estimate and judgment.

Same objection.

A. I cannot give an estimate until I have examined into the property which he deeded to us.

Q. I am inquiring generally as to the present value of the same interest which he conveyed in 1879. Will you give us your best judgment, having had personal charge, as you say, of all of it for several years past?

Same objection.

A. My answer is the same as before, as it is not clear in my mind as to certain pieces of property—the number of acres or lots.

Q. Is said interest now fairly worth $150,000?

Objected to.

A. I don't think it is.

Q. Is it fairly worth $125,000?

A. I hardly think it could have advanced that much in value.

Q. Has income and rents doubled since 1879?

Objected to.

A. I do not know how much the property has advanced in value. The rents have not doubled since 1879, except as to one piece, which is now renting for $750 per annum. At the time of the transfer it was paying no rent, as it was a vacant lot.

Q. How much rent did the 5th Ave. building, Nos. 83 to 87, yield, in the aggregate, per year from 1874 to 1878?

A. I do not know.

Q. What was the reason that that building during those years was most of the time suffering for want of tenants?

A. I presume on account of the dullness of the times.

Q. How was it about the Lake St. property, built at the same time; was that most of the time vacant or yielding rents?

A. I believe that was occupied most of the time at a fair rent.

Cross-examination by Mr. BUELL:

Q. When you speak of the indebtedness of your brother Alex. to yourself and your sisters as being over $120,000 as near as you can recollect, does that include the amount due from him to your
293 mother, or was that in addition to the sum due you and your sisters?

Objected to as leading.

A. I intended that that should include my mother's claim also.

Q. Were you ever able definitely to ascertain the amount which your brother Alex. owed to yourself, your mother, and sisters?

A. I figured it over in a rough sort of way. My recollection is that it is somewhere about the figures I have given.

Q. Tell us how you know that Alexander in July, 1879, was indebted to yourself, your mother, and sisters. Give us your means of knowledge and all the information you have on that point.

A. Upon his accounting with us it was found upon examination of his work and transactions that he had used a large amount of money without the knowledge or consent of my mother or any other member of the family, and that he had not only lost through various transactions his own share, but had also used a large share belonging to the other heirs. He received $60,000 from a piece of property which was sold by my father, the money from which was paid to my brother; $30,000 from a lot on 5th avenue, also sold by my father; $31,000, or about that, from a house and lot on Wabash Ave.; then, I believe, he received during his administration $120,000 of rents, and at the time he took charge there was a large amount of money in the bank in addition to the amounts already given, the amount of which I do not remember.

Q. About the time of the settlement, in July, 1879, did you have a conversation with your brother Alexander in regard to the indebtedness to yourself, your mother, and your sisters? If so, state what he said about it, as near as you recollect.

Objected to, as admissions so made are not evidence in this case.

A. I cannot recollect having any conversation in regard to the details and particulars of it, but we had a conversation in a general sort of way. I do not remember the words of the conversation.

Q. Did you employ anybody, together with other members of your family, to settle and account with Alexander on their behalf?

A. We employed Mr. Barker and Mr. Buell.

Q. What did they do for you in regard to the settlement?

A. They advised a partition, and proceeded to do what was necessary to carry it on and complete it. They also looked into my brother's affairs and found how much was due us and how much he had used of the money belonging to the estate in his speculations, and they did carry the partition on and complete it.

Q. Was the settlement as made by them approved?

A. It was.

Q. You have shown here by request of complainant's counsel a memorandum book of accounts kept by Elsie and youself. I will ask you for what purpose do you keep that book?

A. We keep it partly for our own satisfaction, and, in case we might have to make an accounting, it would be necessary to have a memoranda to go by.

Q. Why do you make any mention of moneys which you gave Alexander?

A. Because I do not consider that he is entitled to any money from the common fund, and I have always on that account kept the money paid him separate from the regular personal account.

Q. Are you under no obligations or agreement with Alexander to pay him the money which the books show you have given him? If not, why do you give it to him?

A. We are under no obligations whatever to pay him money. I give it to him, not because I owe him or am in any way under obligations to pay him money, but because he needs it and be-
294 cause he is my brother.

Q. Is your mother or other members of the family aware of the fact that you are in the habit of helping Alexander in this way?

A. They are aware of it.

Q. Who is entitled to a share in what you have termed the "common fund" of the family?

A. My mother, sisters, and myself.

Q. How and from whose property is that fund made up?

A. From the rents collected by me from the property belonging to my mother, sisters, and myself.

Re-examination:

Q. Who has charge of the personal property, notes, obligations, &c., now standing in the name of your mother?

A. She has placed them in my hands alike with the real estate.

Q. Do your mother, sisters, and yourself share and participate in the whole proceeds of real and personal property all alike?

A. They participate in the proceeds of the real property; as for the personal property, there has been nothing received from it to participate in.

Q. I see on your book an item relating to a stone quarry. Please explain what that refers to.

A. Nov. 15th, 1879. Robert Ray, to be used in case of quarry company, legal expense account. My mother came into possession of some quarry bonds from Alexander, which I have since offered to sell for ten cents on the dollar, thinking that we might possibly get something from the land. We paid an attorney, Rob't Ray, $50.00 to go down to Morris, where the quarry is, and see about it.

Q. Is there not a number of entries on this book relating to installments to S. B. Munson, Jr.; if so, what do those entries refer to?

A. Those entries refer to rents payable by Munson to the estate

Q. Look at the item, "Dec. 9th, 1879. By fifth dividend of City National Bank, $280." What does that refer to?

A. The bank failed, and this was the fifth dividend that it paid. It is a certificate which Alexander transferred to my mother.

Q. Are you prepared now to admit that all receipts from personal property and expenses arising in taking care of the same were placed in and met from the common fund in the same manner as the real estate, or was there a difference made?

A. I had forgotten in my answer before to this question that there was any proceeds gotten from the personal property. I have found one item of $280, and there may possibly be more. Whatever proceeds there were from the personal property and expenses incurred was used in the same way as the proceeds of the real estate, provided they belonged to myself, mother, or sisters.

JULY 15TH, 1882.

Examination of JAMES B. WHITE resumed:

Q. Have you brought with you the notes spoken of yesterday?

A. I have, and now produce what I have got, all except one:

June 17th, 1879.—60 days after date; judgment note, $500; Alex. White, adm'r, to the Traders' Bank of Chicago; interest, 10 per cent.

June 12, '79.—60 days after date; judgment note, $500;
295 Alex. White, adm'r, to the Traders' Bank of Chicago; interest, 10 per cent.

Oct. 3, '78.—One year after date; promissory note, $2,000; Alexander, James B., Elsie, and Mary S. White to James Smith, of the city of Buffalo, State of New York; interest, 7 per cent.

Aug. 20, '78.—$2,000; judgment note; Alexander, Mary S., Annie C., and James B. White to L. C. Paine Freer, on or before one year; interest, 8 per cent., semi-annually. Endorsed: $80; 6 months' interest; paid to Feb'y 20, '79.

(Witness testifies further:) The note of Lazarus Silverman I cannot find. Alex. gave Silverman the notes of C. L. Rice & Co., as I think, collateral security to Alex.'s note, and I think his note was guaranteed by some member of the family. We were under some legal obligations to pay it. The notes were left with the receiver of C. L. Rice & Co. by me, and I think he mislaid them; that is all. The original date of Alex. White's note I do not remember. I have no recollection which ones of our family were on the note. The written statement I now produce is all that I can find relating thereto. (Statement offered in evidence.)

Q. Is there not some other note or notes given by Alex. White that your family assumed? Try to refresh your memory.

A. I recollect of only one other note, given by my brother and myself, some time during 1878, after June 1, to W. L. McMicken, or Sarah McMicken, for $8,800. It was given for part cash, part coal lands and some quarry bonds or stocks, as I have since found out.

Q. Has your family assumed the payment of this note?

Objected to.

A. I am paying the interest notes regularly, as they become due, out of the family fund. The rate of interest is 8½ per cent. The note runs for ten years from date.

Q. What other security does McMicken hold for said note, if any?

A. Nothing.

Q. Why did you not refer to this note on your examination yesterday?

A. Because I did not remember at the time, and didn't notice any payments in my book, as far as I looked.

Q. Is not a payment of interest, under date of Oct. 17, 1879, conspicuously appearing from your account book, covering $365.37 interest on note of S. McMicken up to Sept. 17, 1879?

A. Yes; it is on the book.

Q. Please tell us how you came to sign this note of $8,000, ten years at 8½ per cent., with your brother?

Objected to.

A. Some time during 1878 my brother came to me and wanted me to sign some notes. I asked him what he wanted to do with them. He said that he was a little behind in collection of rents, and as taxes were coming due he needed money to pay them with. He represented to me that the money was to be used entirely to pay taxes due on the property of the estate. I asked him who he got the money from. He said, "Never mind; you would not know who it was if I told you." I suppose that he would use the money as represented to me by him, so I signed the note.

Q. Why did you not tell him to go to your mother or older sisters?

A. Because he requested me not to do so.

Q. For what reason; what did he say?

A. He said that he didn't want my mother to know, as it might worry her; and he requested me to say nothing to my sisters, as they would probably tell my mother.

Q. Was this the first note or obligation of Alex. White's which you signed your name to?

A. I believe it was. I am quite certain it was the first, and given before the other notes.

296 Q. How long after signing this note of $8,000 was it that yourself, Mary S., Annie C. signed another with Alex.?

A. I cannot say; I haven't any recollection. It wasn't a year, I don't think.

Q. How did you and sisters come to sign the other note—the note of Aug. 20, 1878, for $2,000?

A. I answered once before the same question. Alex. came to us and requested us to sign the note. We asked what for. He said he wanted to get money on it to use for paying debts of the estate. We had confidence in him and believed he would do as he said; so we signed the note.

Q. Why did you not tell him to go to your mother?

A. I do not remember that my mother was at home, and, if she was at home, I do not remember the reason we did not go to her.

Q. How did you and sisters come to sign the note of Oct. 3, 1878, for $2,000?

A. My brother came to us and asked us to sign the note. He said he wanted to use the money for estate matters. We signed the note. That's all.

Q. Why did you not tell him to go to your mother?

A. I do not remember why.

Q. How did you and sisters come to sign the note of Lazarus Silverman? State circumstances.

A. I have no recollection that it was signed by myself or sisters, but presume it was, as it would not have been paid by us unless we were under some legal obligation to pay.

Q. Have you ever assumed or seen any notes or obligations on which the name of your mother appeared?

A. No, sir; I am quite positive I have not.

Q. Is this the bill of sale given by Alex. White for his interest in the oil paintings?

A. It is.

The same is now offered in evidence, marked Exhibit No. —.

Q. How long have you — that paper in your possession and how did you get it?

A. I have had it in my possession since July, 1879. I received it from my brother before he went East, in 1879. It is in the handwriting of Ira W. Buell.

Q. When was the consideration of $1,200 paid?

A. About the same time as the bill of sale was given—in July, 1879.

Q. How was it paid; by whom?

A. It was paid by the purchasers and taken in part settlement of what my brother owed us.

Q. Please tell us how the value of the pictures or his interest was arrived at.

A. I do not remember exactly how they were arrived at.

Q. If not exactly, give us some idea as to arriving at their value.

A. I believe the pictures were considered worth something over $7,000. I can give no idea how it was arrived at. That was generally understood what they were worth.

Q. Who first proposed or spoke of transferring said interest?

A. The family.

Q. I want to know who.

A. I believe myself and Elsie first talked about it in the summer of 1879.

Q. What conclusion did you and Elsie come to?

A. We found that the property which my brother had was not enough to pay us what he owed us; so we considered it nothing but right that he should give us a bill of sale of his interest in the pictures.

Q. Was this before or after the deeds of the real estate had been made?

297 A. I could not say; the date of the deeds will show.

Q. Do you mean to be understood that this agreement as to the oil paintings was made simultaneously with the deeds?

A. I do not remember the date of the deeds.

Q. Did you consider that you had enough to pay you after obtaining the real estate and paintings?

A. We could not have considered that—that we had enough—as there was a balance of about $15,000 which was still owing to us, but we agreed, the family with my brother, that we would take the property deeded to us, together with his interest in the pictures, in settlement in full of all he owed us.

Q. Why did you not insist upon payment or security for the balance?

A. He had nothing to give—further to give—and we were not inclined to press him.

Q. Had you stripped him of all he had so you could not squeeze anything more out of him?

Objected to.

A. I don't know if you called it stripping him or not. He owed us large amount, more than he was able to pay, and as he owed it to us we felt that we had a right to demand payment, and we took what we could get in settlement, although what he paid us did not amount to the sum he at first owed us.

Q. Had he turned over the various notes, obligations, and other collaterals to your mother before this time; if not, why did you not insist upon Alex. including that portion of his assets in the transfers to yourself and sisters?

A. He had already or did turn them over to my mother at or before this time.

Q. Why was it that he gave to your mother a judgment note for $42,000 and more and a lot of what you called worthless securities when yourself and sisters took conveyances of his valuable interests and estate?

A. I do not remember the facts regarding why it should have been done. She left that with her attorneys, Barker & Buell; so did we.

Q. Was there anything antagonistic between your mother and the rest of the family, and did any one seek an advantage over the other in securing his claim against Alex.?

A. There was nothing antagonistic between mother and the rest of the family, and no one sought an advantage over the other.

Q. And all the proceeds and revenues as well as expenses arising from such conveyances and various transfers by Alex. have since been pooled between you; is not that correct?

A. Proceeds, whatever they were, were deposited in the bank with the other receipts and used the same as other receipts; it is one common fund.

Q. When did yourself and family first learn of Alex.'s misapplication of family funds? State the time.

A. In the summer of 1879.

Q. How did you find out?

A. The first intimation we had of it, as I remember, was when a check given to the butcher was thrown out of the bank. We then thought it about time that an examination should be made into my brother's doings. Accordingly, at my mother's request, I asked Mr. Barker to call at the house; he did so. On consultation with Mr. Barker he decided that an investigation ought to be made, and that the best way to settle the matter would be to complete at once the partition proceedings, which had already been commenced. Accordingly Mr. Buell and Mr. Barker went immediately to work and completed the partition. On investigation by Mr. Barker and Buell into my brother's affairs it was found that he had used for his own speculations and without the knowledge and consent of
298 the family not only of his own interests, but a large amount of interests of the others in the estate.

Q. Do you know how they found it out except by what they told you?

A. At the time I did not.

Q. Did you assist, then, in their investigation?

A. No.

Q. Why not?

A. I did not consider it necessary, and was not acquainted with the facts.

Q. Did they ask you to assist?

A. No, sir.

Q. Did they ask any one else of your family to assist?

A. No, sir; not that I know.

Q. Did you make any investigations for yourself?

A. No, sir; I left it entirely with Mr. Barker and Mr. Buell.

Q. Did Messrs. Barker & Buell tell or advise you that you had to pay the several notes to the bank, Silverman, McMicken, Freer, and Smith?

A. No, sir.

Q. Why did you not take an assignment or other conveyance of Alex.'s interest in the American Oleograph Company?

A. I do not recollect that he had anything that I knew.

Q. You knew that he was interested in the American Oleograph Co. in July, 1879, did you not?

A. I knew that he was interested.

Q. Why did he not transfer that interest to your mother?

A. I don't know, as I do not remember anything about it.

Q. Did not the American Oleograph Co. continue to be a tenant of yours after July, 1879?

A. Yes; they did.

JULY 31ST, 1882.

Examination of JAMES B. WHITE resumed:

Q. Did you inform Messrs. Barker & Buell, after the butcher's check had been thrown out, that yourself and sisters had signed paper with Alexander upwards of $15,000, or thereabouts?

A. No; I do not remember that I did.

Q. Why not?

A. I don't remember why.

Q. When did the fact of your so signing notes first come to the knowledge of your attorneys?

A. I believe about a year ago I spoke to Mr. Barker in regard to the McMicken note; as to the others, I do not remember of ever having spoken to my attorneys in regard to them.

Q. Why not?

A. Because they had been paid and I thought no more about them.

Q. When did your mother first learn of yourself and sisters signing these notes?

A. My mother to this day knows nothing of the McMicken note. I do not remember when she knew of the others.

Q. Do all your sisters know that these various notes were so signed and part of them paid out of the common fund?

A. All but my sister Margaret, who has not been at home since. I am not positive whether Annie knows about the McMicken note. I do not think she does.

Q. Why has the fact not been communicated to Margaret in writing?

A. Because she is an invalid, and it would not be advisable to trouble her with business affairs.

299 Q. What did your mother say when she first learned that yourself and sisters had signed paper with Alexander?

Objected to as immaterial.

A. I haven't any recollection.

Q. Did she say anything that made an impression on your mind; if so, what was it?

Same objection.

A. I remember that she was displeased, but have no recollection as to what she said.

Q. What did your sisters, Elsie and Mary, say when they heard of your signing the McMicken note?

Same objection.

A. They were surprised.

Q. Is that the whole extent of their feeling to which they gave expression?

A. I don't remember the exact words they said. They were not only surprised, but displeased at my brothers having got me to sign it.

Q. Has any one of the family ever objected to meeting any of these notes out of the common fund; if so, what was said?

A. No one of the family has objected.

Q. Why was the signing of the McMicken note until now concealed from your mother and Annie?

A. Because we didn't think it necessary or advisable to trouble her. As for Annie—as she was a great deal with my mother, we thought she would be likely at some time to tell her.

Q. When did you first learn that Alex. was behind in his accounts as administrator? State the time.

A. In July, 1879.

Q. Who told you?

A. It was found on making an account that he was behind.

Q. Who took such account on which this fact was first discovered?

A. I believe Mr. Barker and Mr. Driesslein.

Q. Have you under your control any of the figures made on such accounting or can you point us to any one who can furnish the same to us?

A. I have a copy of the administrator's report and other papers relating to the partition, but I am not positive if I have any figures made by myself amongst them. I have some figures made by Driesslein.

Q. Will you please produce all papers and figures made by Driesslein on such accounting?

A. They are in my office. I cannot produce them at the present moment.

Q. Who directed the partition suit to be commenced and for what reason?

A. We, the family, wanted the property divided, and Mr. Barker, the attorney, advised the partition.

Q. Who gave the instructions to Mr. Barker?

A. My recollection is that he came to the house. We talked the matter over, and asked him if we could have the estate divided. He said yes it could be, and as we desired it to be divided we directed him to go ahead.

Q. When was this?

A. It was in the fall of 1878, I should think.

Q. Was Alex. one of the parties who conferred with Barker and gave such directions?

A. I do not remember that he was present when Mr. Barker called, but he understood that there was to be a division.

Q. Did he concur therein?

300 A. He did.

Q. Now, what was the occasion or reason assigned for wanting such partition?

A. The only reason I could think of was that the members of the family all desired it so.

Q. For what reason or owing to what cause?

A. We felt as if we ought to know the affairs of the estate, as we were interested in it. The members of the family were nearly all of age, and we thought it was time the estate should be divided.

Q. Had any accounting ever before been had as to the matters of the estate, or had the administrator refused settlement at any time before?

A. There had been no accounting that I remember; neither do I remember that the administrator had refused to settle.

Q. Had anything theretofore ever occurred among the members of the family to mar or disturb its harmonious relations and mutual confidence?

A. Nothing that I know of.

Q. Why was it that such partition was not amicably had without resort to the courts?

A. I don't know. It was left in the hands of Mr. Barker, and he did it as he thought best, I suppose.

Q. Why was it that the personal estate and moneys on hand were not divided at the same time, when the partition was concluded upon?

A. I do not know.

Q. Did you not learn, while at Milwaukee, that Alex. had bought mostly on credit or assumed $20,000 worth fully paid stock of the American Oleograph Company from Mr. Cotzhausen?

Objected to.

A. No, sir. I simply knew that he had an interest, but what it was I did not know.

Q. Did you not learn that he had bought this interest from Mr. Cotzhausen?

Objected to.

A. I did not know anything of this transaction whatever.

Q. Did not Mr. Thurber frequently speak to you about it?

A. No, sir; he did not.

Q. Were you aware, while at Milwaukee, that your brother was in stringent financial circumstances and had great trouble in securing sufficient funds to keep the business of the oleograph Co. running?

A. No, sir. I was not aware of it.

Q. When, in the spring of 1879, at the request of your brother, you staid with the oleograph Co., and Cotzhausen attached and a custodian was put in, as you have testified, did you take any pains to ascertain the nature of the debt or cause of this trouble?

A. No, sir. I did not consider it any of my business.

Q. Did you tell your mother of it or speak of it at home?

Objected to.

A. Yes. I think I did.

Q. What did your mother or other members of the family say in response?

A. I do not remember particularly what they said.

Q. Was this about the same time when the sheriff inquired for Alex. at your house?

A. I haven't the slightest recollection.

Q. Did any one of the family inform Alex. of the commencement of such suit?

A. Not that I know of.

Q. Did the news which you so brought home create any disturbance or call for any expression or action on part of the family?

301 Objected to.

A. Not at all.

Q. Did it not surprise you and family that Alex.'s interest becoming threatened and your new tenant in the hands of sheriff?

A. I do not remember that it did.

Q. Did any one of you, when the sheriff called at the house quiring for Alex., take the trouble to find out the cause of this l visit?

A. I do not remember that we did.

Q. Why was it that Margaret received a separate deed for pa the real estate owned by Alex. and yourself and other sisters balance?

A. Because myself and three sisters agreed to take ours togeth Margaret not being here, hers was set apart separately.

Q. What did the deed to Margaret cover?

Objected to because the deed is the best evidence.

A. She received—I don't remember now. I have had no occas to look at the deed since.

Q. Is such deed not in your possession?

A. Yes, sir.

Q. Why is it, if a division between you was made at time of th conveyances by Alex., that you cannot now even point out by g eral descriptions, such as made use of in testifying to rental val heretofore, what part belongs to her and what to yourself and ot sisters?

A. I think I can point out what belongs to her, but the quest asked me was what my brother deeded to her.

Q. Point out, then, what belongs to her by general descripti

Objected to.

A. Lake and Franklin building, dock property, Lincoln st cottages, and 30 acres in the town of Lake.

Q. Which part of this did she get from Alex.?

A. I could not say; the deed will show.

Q. Has any division or discrimination ever been made as to ceipts and disbursements chargeable to her estate and that belo ing to or standing in the name of other members of the family

Objected to.

A. There has not. It has gone into the same common fund.

Q. Now, why is it that yourself and sisters took all the valua interests and landed property belonging to Alex. and left y mother nothing but what you called, on prior examination, a lo worthless securities?

A. I am sure I don't know.

Q. How much money did you let Alex. have since last April f the common fund?

A. I had paid for his lunches and I have given him at diffe times small amounts. I also paid ten dollars for his board whi Evanston.

Q. What did you exchange checks for in April last?

A. One day he came to me and asked me if I would give him a check for $200. He was about making a loan for a man in Boston or New York, I forget which, and he said that his check had not yet arrived.

Q. On your cross-examination by Mr. Buell you were asked for what purpose you kept that memorandum book or account produced by you, and you answered, among others, that it was kept so that "in case we might have to make an accounting it would be necessary to have a memorandum to go by." What do you mean by this? Explain.

302 A. I mean just what I said. There is a possibility, I suppose, at some future time of our having to make an accounting. I have not any particular case in view.

Q. Since the family members have all agreed to participate in forming a common fund for the mutual benefit of all and without regard to personal expenditures, what is there in the way of an accounting, to which you refer or that is in your mind?

Objected to assuming what has not been proved.

A. For one thing, if my brother is ever worth anything I should expect him to pay back the money which has been advanced. There is a possibility of the family wanting their property divided from the rest; nothing else.

Recross-examination by Mr. BUELL:

Q. Who received the proceeds or avails of the notes of the two $500 notes, executed by Alex. to the Traders' Bank, which was subsequently paid by yourself and sisters and mother?

A. My brother Alex.

Q. Who received the proceeds or avails of the other notes, namely, the one payable to L. C. P. Freer and to Smith, of Buffalo, and to Silverman and to McMicken?

A. My brother Alex.

Q. At the time of the accounting between yourself, sisters, and mother, in July, 1879, were these notes or either of them taken into account?

A. No, sir.

Q. In July, 1879, what was your age; what business experience did you then have?

A. I was 21 years of age; had had but very little, if any, business experience.

Q. Prior to the time that you took charge of the affairs of your mother and sisters and yourself had you ever been in any business for yourself or anybody else?

A. I had been in the office of the American Oleograph Company.

Q. How long had you then been out of school?

A. About a year.

Q. Had you had any other business experience besides what you had learned in connection with the oleograph company?

A. None whatever.

Q. Prior to the time of the settlement with your brother Alexander did you know how much money, notes, or personal property your father left at the time of his death?

A. I did not.

Q. When did you first take steps to ascertain how much he had left and the condition of the estate?

A. It was the spring or summer of 1879.

Q. Do you know of your mother or sisters having taken any steps to ascertain what was the condition of the estate or how Alexander had managed the same prior to that time?

A. I do not.

Q. Why did they not? State, so far as you know.

A. Because I do not know that they had any occasion to do so.

Q. In giving a reason for keeping the memorandum book which you have produced here you say there is a possibility of being obliged to render an account some day; an accounting with whom do you mean?

A. An accounting with any of the family—Elsie, Mary, Annie, Margaret, and my mother—that's all; and myself.

303 *Continued on Aug.* 1, 1882.

Q. Have you searched for the figures and statements made by Dreisslein on the accounting of July, 1879, and have you been able to trace their whereabouts?

A. I have found a paper with some figures made by Mr. Driesslein, but do not know when they were made.

Q. I do not call for any paper written and gotten up within the last — weeks, but for the figures made and used in July, 1879, on the accounting of which you spoke of yesterday and the day before. Have you been able to find them?

A. I understood you to ask me yesterday and the day before whether I had any figures, without reference to the time they were made. The paper I produce is the only one I can find. I do not know when it was made.

Q. When did you first see it?

A. I don't remember of having seen it till about two weeks ago.

Q. Is that not a paper gotten up by Driesslein and your brother, during the interval of his examination, while at Evanston of late?

A. I could not say; I don't know.

Q. How did you get possession of it?

A. I got it in the vault.

Q. Who first called your attention to it?

A. Looking over the papers in the vault, I came across it myself.

Q. When?

A. I should think ten days or two weeks ago.

Q. Who put it there with your papers?

A. It was not with my papers; it was lying loosely on a shelf. I do not know who put it there.

Q. Have you asked Mr. Barker or your brother (both of whom are here present) any questions about that paper—how it came there; what for; what it was?

A. I asked my brother what this was. He said it was a statement made out by Mr. Driesslein. That's all.

Q. Did you not confer with your counsel about it before bringing it here or as to the propriety of using it?

A. As I was walking over with Mr. Barker this morning to Mr. Buell's office I took it out of my pocket, showed it to him, and I said, Mr. Cotzhausen had requested me to produce any figures which I had and which were made by Mr. Driesslein. He said, That's all right. I put it back into my pocket without further conversation on the subject.

Q. Have you been able to trace or obtain the original figures made by Dreisslein in July, 1879, or have you never seen any that you know to have been made in that time?

A. I have no original figures that I know of made by Driesslein, unless it be this paper which I have in my hand, which I have produced. When it was made I do not know. I do not know positively that I have seen the original figures made by Dreisslein.

By COMPLAINANT'S COUNSEL: That paper which you now hold in your hand and found of late in your safe by mere accident is not called for *me* by me at present.

JAMES B. WHITE.

304 AUGUST 1, 1882.

Examination of ALEXANDER WHITE resumed:

Q. Since your examination was interrupted, on June 23, '82, have you taken occasion to refresh your memory on the various subjects inquired into?

A. Somewhat.

Q. Can you now furnish us the compilation of figures by which yourself and family arrived at your indebtedness? If so, produce it.

A. Here it is.

Q. I am not inquiring or calling for figures and tables made by you since your last examination, but for the figures and compilation made preliminary to and as a basis for your final report in probate; where are they; will you please present them?

A. The figures are as I presented them; these are the figures; the original compilation I cannot find.

Q. What became of the original figures and compilation?

A. I think it was given to Mr. Barker.

Q. When did you last see them?

A. I think it was about the middle of July, 1879; not since that I remember of.

Q. Who did the figuring and compiling at which your indebtedness was then fixed?

A. Mr. Joseph N. Barker, Mr. Charles Driesslein, and myself.

Counsel for complainant offers in evidence certified copies of inventory, final account of administrator, report and petition for distribution, notice of settlement to heirs, consent of parties interested to settlement and distribution, and action of the court thereupon; all of which proceedings, papers, and records are in the county court of Lake county, State of Illinois, in the matter of the estate of Alex. White, deceased.

The same are marked Complainant's Exhibit 6.

Q. Please look at these papers now exhibited to you, Complainant's Exhibit No. 6, and tell us whether that contains the official final account of yourself as administrator which you have repeatedly referred to in your examination.

A. It seems to me to be a copy of the original.

Q. Do you recollect the fact of making and the circumstances attending such accounting?

A. I remember Mr. Barker asked me to make my final report. I then asked him how it should be made, the legal form of it. We then, I think, Mr. Barker and myself, made the statement as submitted as my final report as administrator.

Q. How did you make it?

A. I have not thought of it since. As I remember, Mr. Barker met me at my office, No. 85 5th avenue, with Mr. Dreisslein. Mr. Barker then obtained the figures that make up my final report as administrator from a compilation.

Q. How was the compilation made?

A. It was made from the bank books, vouchers, and receipts.

Q. Tell us by whom.

A. By Mr. Dreisslein and myself.

Q. How long did it take you?

A. Parts of two days, I think.

Q. Who did the writing while such figures were being compiled?

A. Messrs. Barker, Dreisslein, and myself.

Q. Where was the figuring and compiling done?

A. In my own office, 85 5th Ave.; also at Mr. Barker's office.

Q. When was it? Give us the day.

305 A. About the middle of July, 1879.

Q. Does that report truly show the result at which you gentlemen on such accounting arrived?

A. For the purpose of my final report as administrator, I think it does.

Q. Were any of the items therein referred to and embraced averaged or lumped, or were they the result and aggregate of items and figures in that behalf made?

A. None of them were lumped or averaged; they were the result and aggregate of items and figures in that behalf made.

Q. Now, since you were called upon to produce the figures and compilations then made and use the same vault and office with Mr. Barker at present, why do you not now present and produce the original figures and tables?

A. Since my last examination I have faithfully searched among my own papers for the same, but as I now remember this compila-

tion was given to Mr. Barker about the middle of July, 1879, when he was occupying an office on La Salle street. Since then he has removed his office to the corner Randolph and Dearborn Sts.; it is only recently I have made my headquarters there.

Q. Why do you not ask Mr. Barker, your attorney in this case, for such papers, or have you done so?

A. As I have just stated, I now think that it was given to him. It was as late as this morning that I examined my papers for such compilation, and it came to my mind then that it had been given to Mr. Barker, and I intended to ask him this morning if he did not recall the circumstance, but have not seen him since this last examination of my papers.

By COMPLAINANT'S COUNSEL: You would greatly oblige counsel if you would answer a simple and short question in a plain and concise manner and not necessitate burdening the record with page and page of mere words and phrases.

Q. I now repeat my foregoing question and ask you to answer it directly without dressing.

A. I do not see how I can answer it differently from what I have already done.

Q. On the 23d of June, 1882, you were, for the second time, called upon to produce the original figures and compilation, and you then stated: I have been unable to find the compilation desired, asked for yesterday, having looked in the vault and my trunk, where I supposed it was. Both of your counsel, Barker & Buell, were then present. Now, I ask you again: Have you asked Mr. Barker, to whom those papers were given in July, 1879, as you now state, for them? If not, why do you not do so?

A. As I have before stated twice, I think, I have not seen Mr. Barker since I thought the compilation was given to him.

Q. Will you now—a recess being taken until to-morrow—ask him for those figures and papers made in July, 1879, and produce them by 11 o'clock a. m.?

A. I will endeavor to do so.

AUG. 1, 1882.

Examination resumed:

Q. I now ask you again: Have you inquired of Mr. Barker, who is here present, as to the whereabouts of the original figures made in July, 1879, on your accounting with the heirs and estate, and have you been able to find them?

306 A. I asked him, but am unable to find them.

Q. What did Mr. Barker say as to them?

Objected to.

A. That he remembers of having had it.

Q. What else?

A. He couldn't say where it was now.

Q. Is that all?

A. I think he also said that he must have mislaid it, or words to that effect.

Complainant introduced JOSEPH N. BARKER as a witness, who testified as follows:

Q. What became of the papers and original figures made by yourself, Alex. White, and Dreisslein on the accounting of July, 1879?

A. The question assumes that I made figures. I did not make a statement of account for Alex. White. I was present for one or two or more days where the figuring was going on which would show the statement of his account with the estate, and a paper was written, I think in pencil, on a writing pad which showed, in brief, his receipts and expenditures; that paper I had in my possession. I do not know where it is now. I do not know that I preserved that paper. After I had obtained a settlement with Mr. White for his mother, brother, and sisters I do not know that I retained the paper, and I do not know where it is now.

ALEXANDER WHITE resumed:

Q. What have you done for a living since the day of your last examination?

Objected to.

A. I don't know as I have done anything.

Q. What for did you go to Evanston?

A. It is such a foolish question that I ask the complainant to repeat it.

Question repeated.

—. I went there on a visit.

Q. Where did you stop?

A. At the hotel there—Avenue House.

Q. How many days did you stay?

A. About a week.

Q. Have you and Mr. Driesslein since your last examination been engaged in figuring and preparing tables for this case?

A. No, sir.

Q. When did you so engage in figuring the last time?

A. Not since July, 1879.

Q. Has Driesslein prepared any figures, compilations, or tables for you since July, 1879; if so, when?

A. I requested him since my last examination to prepare a compilation of my receipts and expenditures, similar to the one he prepared in July, 1879, when I made settlement with my folks. He did so, it being the one I produced yesterday.

Q. From what facts, books, vouchers, and other evidence did he make this last compilation?

A. From the same ones that he made the original compilation, which we have been unable to find.

307 Q. State in detail what facts, books, vouchers, etc.

A. From two books made up by Mr. Driesslien from Sept., 1878, to July, 1879.

Q. What books were they and where are they?

A. The two books are in the vault in my office; one shows my receipts and deposits, also my expenditures, from April, 1872, to about the summer of 1879; the other is a compilation of these receipts and expenditures; one is in the nature of a cash book, the other a ledger.

Q. When were those books first opened?

A. They were commenced about Sept., 1878; not earlier; perhaps not till the early part of January, 1879.

Q. In whose handwriting are they?

A. Mr. Dreisslein's.

Q. Who engaged him to do so?

A. I did so, on my own account.

Q. How long did he work posting those books?

A. From Sept., 1878, to July, 1879. He was not in my employ all the time. He would call at my office, 85 Fifth Ave., different times during the day—sometimes in the morning, sometimes in the afternoon, sometimes after business hours—just as he was able to leave his other business. He was engaged mostly as a stenographer in the various courts, and could not give me his entire time.

Q. Did he commence posting these books back to the year '72?

Objected to.

A. He did.

Q. From what facts, books, vouchers, or other material then at his command?

A. From our various bank books, checks, vouchers, receipts, memoranda that I carefully preserved from the time I became administrator up to to-day.

By Mr. BARKER: Up to that date.

Q. Will you please tell us in detail whether the bank books, checks, vouchers, receipts, and memoranda are the same which you brought into court on your last examination? And, if others, please specify at length.

A. The ones I produced constitute most of the material. The continuation of the Traders' National Bank book I have been unable to find or to obtain from the bank. The City National Bank book I have been also unable to obtain.

Q. Was there any other documentary evidence outside of what you had in court the other day and these two bank books of Traders' and City National, which you speak of as being lost or missing?

A. Not that I now recall. Of course, not having examined the numerous vouchers and receipts since July, 1879, I cannot say positively that the various vouchers and receipts I produced are all there.

Q. Was Driesslein able to post these books and accounts without any help or explanation from yourself? And, if not, tell us what assistance you rendered.

A. No, sir; my assistance was necessary. I explained to him to what account and for what purpose the various checks on the bank were given; also to what account and for what purpose the various receipts were deposited. For instance, take my first check on the

Traders' National Bank of Chicago, numbered one, made Sept. 19, 1872, for $600, to the order of L. L. Leach. I would state to him that this Leach was the mason contractor for the construction of the Lake and Franklin street building, and that this check was
308 drawn to apply on his contract, and so on with the various other checks; the same with the receipts of money deposited in various banks. If it was rent money I'd tell him for what piece of property it was the rent of, etc.

Q. Can you account for the loss of the two bank books which you have mentioned, while all other papers and books have been carefully preserved?

A. I cannot.

Q. Have you been able to procure duplicates or transcripts from the banks as requested?

A. I have not. Mr. Barker wrote to Mr. Burley, the receiver of the City National Bank, and ascertained that the bank books of the bank were not any longer in existence. This information came to him by letter, dated June 26, 1882. As to the other, the Traders' sent word that it didn't see how it could make a continuation—that it would be very indefinite and uncertain.

The witness now produces the two books above spoken of and called for for inspection of counsel.

Q. Have Barker and Buell any account in said books? Please look at your ledger and tell us.

A. No, sir; they had no separate account. Moneys paid to them were charged to estate account.

Q. Will you please tell us, by aid of these books, how much money and when they received for legal services from the estate by your hands from Jan'y 1, 1878, to July, 1879?

A.—

Feb'y 25, 1879.	Barker & Buell, for legal services	$50 00
April 9, "	" " "	25 00

Q. Look at the check drawn March 4, 1876, for $500, to Barker & Waite; what was that for?

A. For legal services for the estate of Alex. White, dec'd.

Q. Look at check $500, April 10, 1876, to Barker & Waite; what was that for?

A. Same purpose.

Q. Look at check $150, July 13, 1877, to Barker, Buell and Waite; what was that for?

A. For the estate's legal services.

Q. Look at check $100, July 19, 1877, to Barker and Waite; what was that for?

A. For the White estate's legal services, for contesting taxes; most, if not all of the above, were for contesting taxes.

Q. Look at check for $200, Sept. 8, 1876, to Barker, Buell & Waite; what was that for?

A. Legal services.

Q. Will you please tell us what for you owed Mr. Barker $1,000 in July, 1879, as you heretofore testified?

A. In July, 1879, Mr. Barker made a settlement for me of my account with my folks. I was then indebted to them to $15,000, if not more, than I could pay them. In consideration of a settlement with them in full of all demands, I felt that the transfer of certain property I conveyed him, which I valued at $1,000, was a part consideration, at least, for making this settlement. I had also occasionally asked him for legal advice without his ever making, to my knowledge, any charges for the same. I would here state, though, that I had no title to the property above referred to at that time.

Q. In testifying as above do you refer to an indebtedness owing to Mr. Barker as administrator, or on your own individual account?

A. The latter.

Q. When did you adjust your indebtedness with Mr. Barker? Give us a time.

A. I never adjusted it; he never rendered me a bill.

309 Q. Did you volunteer this payment to him or did he ask you for it?

A. I volunteered it, if anything.

Q. Now tell us what you conveyed to him, and when.

A. I quitclaimed him an undivided half of block four, town of Jefferson, in summer of 1879; I cannot say whether before or after conveyances to my sisters and brother. The record will show. The record title was, at the time I conveyed it, in Wm. S. McMicken. The consideration in the deed to Barker I do not remember; might have been a dollar.

Q. How did you come to state the amount of your indebtedness to Barker at the time to be $1,000?

A. If it was $1,000 it was what I considered the land worth, although really at the time it could not have been sold for more than $500, if that; no market for it. I stated $1,000, just as I remembered it.

Q. Were any figures mentioned between you at the time?

A. No figures particular, that I remember of.

Q. Who drafted the deed?

A. I don't know.

Q. Who caused it to be prepared, yourself or Mr. Barker?

A. I don't remember.

Q. Did you get a receipt from Mr. Barker at the time or subsequently?

A. Not that I remember of.

Q. Why did you not convey this interest to your relatives, as you did not have enough to pay them in full, as you stated before?

A. I felt under obligations to Mr. Barker, as I before stated, and my folks received the major portion of all my estate.

Q. Did you have any property left after the conveyances to your mother, sisters, and brother, and the one to Mr. Barker, your attorney, from which anything has since been realized by you or any one for your use?

A. None that I now recollect.

Q. Up to what time did you continue the collection of rents and income of the estate? Refresh your memory from the books before you and please answer as to date.

A. About May, 1879. The last entry of rents collected in the books before me is May 5, 1879.

Q. Did you at that time relinquish the management of the estate and collection of rents to others?

A. I think not. I think I continued till about July, 1879, when I turned it over to my folks.

Q. Who collected from May 5 to the settlement of your accounts?

A. Partly myself and partly my brother, as I remember.

Q. What became of the moneys?

A. They were deposited in the Traders' Bank, the major portion of them.

Q. What do your books show as to them?

A. No deposits after May 5, 1879, in the Traders' Bank, according to the books before me.

Q. Do the books show any receipts or disbursements on account of the estate after May 5, '79?

A. The receipt account stops with May 5, 1879; the expenditure account with May 19, 1879.

Q. Why is this?

A. Either Mr. Driesslein or myself could not arrange to meet so as to carry the account further; no other reason that I know of.

Q. Is it not a fact that you were altogether absent from Chicago most of the winter of 1878 to 1879 and spring of 1879?

A. I don't remember; might have been so.

Q. Is it not a fact that you were in the East when some of
310 Mr. Cotzhausen's paper matured, on Dec. 1, 1878?

Objected to.

A. I don't remember.

Q. Is it not a fact that you requested the first of December paper to be prolonged by Mr. Cotzhausen until you came back from the East?

Objected to.

A. It might have been so, but hardly think so, as I think Mr. Cotzhausen was paid Dec. 3, 1878, $1,000 and interest.

Q. Where were you about January 1st, 1879, when an extended note matured?

Objected to.

A. I don't remember where I was.

Q. Where were you about Febr'y 1st, 1879, when the $3,000 note matured, payment of which you had assumed?

A. I don't remember where I was.

Q. Where were you about the first of March, 1879, when Tenney & Flower attached the American Oleograph Co. for Mr. Cotzhausen on the notes referred to?

Objected to.

A. I don't remember.

Q. Now, is it not a fact that from Dec., 1878, or Jan., 1879, until beginning of summer you were absent from Chicago and could not be found so as to make legal service?

Objected to.

A. I really don't remember. I never absented myself at any time that I remember to avoid legal service.

Q. When did you first enter Columbia College in 1879?

A. About October.

Q. Did you, in the winter of 1878 to '79, request your brother James to stay around the office of the oleograph company while you were gone, as you needed some one in there in whom you had confidence, or words to that effect?

A. It is very likely that I did so.

Q. How long did James stay there during your absence?

A. I couldn't say when I was absent whether he was in the office or not.

Q. Were you informed while East that Cotzhausen had caused the property of the company to be attached on account of the $3,000 note which you had assumed?

Objected to.

A. I don't remember about it; very likely I was.

Q. Did you do anything to relieve the company, which was an indorser merely, from said attachment?

Objected to.

A. Not that I remember of. I would like to state here a number of the previous questions assumes my knowledge or remembrance of notes, attachments, that I am not at present clear about. I remember that there were attachments or hearing of attachments, but can't state now the time and place and circumstances of the same. I have nothing to refresh my memory at hand.

Q. How long had you been at home from the East when yourself and the company gave judgment notes for $10,000 secured by chattel mortgages on the company's property to the Cleveland Paper Company?

Objected to.

A. The question assumes that I had been East. I don't remember about it. I don't remember that I had been East, or if I had been East that I had returned.

Q. Did you so join in notes for $10,000 as enquired for above?

Objected to.

A. I think I did.

311 Q. How much in cash was obtained on such loan and what was done with it?

Objected to as immaterial.

A. I do not know the amount obtained, *or*, of my own knowledge, nor, of how it was expended, of my own knowledge. I have been informed by Mr. Munson, who was the treasurer of the company at the time, that the amount obtained for the company was paid out for the company's expenses. I have before me a statement made out by Mr. Munson.

Q. How much did you, about the time of this loan, draw out of the company's treasury?

A. I received from Mr. Munson, I think, about $200 as part payment of moneys advanced the company by me. I loaned the company in July $200.

Q. Is that all the money which you received, directly or indirectly, at the time of this loan?

A. All that I have any remembrance or account of. I am quite positive I never received any more, even if I did that.

Continued Aug. 2, 1882.

Q. When did the Traders' National Bank first commence by its employees to collect the rent due to the estate?

Objected to.

A. I don't remember.

Q. Will you please look at the bank book of deposits and refresh your memory?

A. It is not here.

By COMPLAINANT'S COUNSEL: I now call for the production of the various deposit books, checks, vouchers, and memoranda which were produced in court on this examination and identified on June 23, 1882.

Q. Will you please to look at Exhibit Five and answer my question?

A. I don't know as I can tell from their bank book. The first deposits accompanied by names of tenants appear under date March 1, 1875, in ink made by the bank officers; the book will show.

Q. Do such collections from tenants appear upon said bank book in the writing of its officials continuously from March 1, 1875, until the end of that deposit account, November 30, 1877, when the book closes?

A. The writing appears to be the official writing; it appears to me to be so. Entries of such rents appear on every page since 1878.

Q. Did Barker & Waite collect rents for the estate and receive commissions therefor?

A. They did.

Q. Look at page 218 of your cash book and tell us whether there was not paid Barker & Waite $591.19 for commissions on such collection from May 6, 1872, to May 7, 1873, at the rate of 5 per cent.

Question objected to, as the book is the best evidence.

A. Yes, sir; I think there was.

Q. Did Anton Kalck at any time collect such rents for you?

A. Yes. He collected certain rents from June 19, 1873, to August 4, 1876, and was paid for the same $370, according to the book before me; I do not know the rate of commission.

312 Q. Did James Hill collect at any time such rents for you and receive payment therefor?

A. According to the book before me he collected certain rents from Dec. 30, 1876, to Nov. 15, 1878, and was paid for the same $132.50; no percentage mentioned.

Q. Did D. H. Mason collect at any time such rents for you and receive payment therefor?

A. Yes, sir.

Q. What became of the money which he collected?

A. The book before — states as follows: That D. H. Mason collected rent for Dec., 1877, as per statement, and claims to have lost the money, for which he gave two notes. There are two amounts which he collected; the notes amounted to $193.75.

Q. What became of those notes?

A. I don't remember. I think, though, as Mason was not worth anything, I did not preserve them.

Q. Did you at any time while in charge of the estate employ any other collectors or agents for that purpose besides those mentioned? If so, give names.

A. Not that I now recall.

Q. Did you at any time employ your brother James for that purpose?

A. I think that he did collect some rents some time in the summer of 1879; it seems to me I asked him to do it.

Q. Please tell us how much by way of checks you gave your brother James for his personal use since January 1, 1879, and when.

A. I gave him a check Jan. 17, 1879, for $125, endorsed James B. White and Frank Kerting; also Feb'y 7, 1879, for $200 (check James B. White, per request, $200), endorsed James B. White and S. B. Munson, treas., both on the Traders' National Bank of Chicago.

Q. What was the occasion for writing on the face of the latter check the words "per request?"

A. I should judge because my brother requested that amount of me.

Q. What for?

A. I should think for his own expenses; not remembering about the particular check in question, I know of no other reason.

Q. Why did you write on the face of the check "per request?"

A. I know of no other reason than what I have already stated.

Q. Were these the first times that you gave James any money?

A. I could not say positively; very likely so. I handed him money at other times; at various times.

Q. Why were these two checks not entered on your book as being given to James?

A. I know of no other reasons than that they were clerical mistakes or that they were paid to my sister, in whose name the charges were made.

Q. Why were these books not continued to July, 1879, the time of settlement?

A. I answered the same question yesterday. Probably because Mr. Dreisslein and myself could not arrange the time for meeting. I remember of being very anxious to have it written up, and it was very difficult for Mr. Dreisslein to make any definite appointments with me, he being engaged in courts during the day.

Q. Why have those books not been continued, posted, and balanced since July, 1879?

A. I never had any occasion to do so.

Q. What was the amount charged to your account on such books on the day when they closed?

A. On may 14, 1879, the books show a balance of, debits and credits, $83,400.38. This includes entries made at the foot of
313 said account, amounting to $6,757.73, all of which make above balance. The account then continues on the debit and credit side as before, and further entries appear, amounting to, debits, $6,957.94, and credits, $3,895.87, leaving a balance of $86,462.45 in favor of the estate.

Q. How did these several additional entries, all of which, except one, under date of October 30, 1873, for $14, show no date, come to be made on said account?

A. The first additional item on the debit side, namely, $14, is for an abstract which had not been previously entered on said side. The second item reads (see journal, page 25) for $78, which was the March, 1878, cottage rents. The third item reads (see journal, page 224) for $458.73, which reads: It was for rent and other moneys received by me. The fourth item reads (see journal, page 226) for $2,000. It was for a transfer made from City National Bank for private account to City National administrator's acc't, erroneously entered and now rectified. The next remaining item which I passed reads (journal, 225) $4,200, — says: "White, debtor, Lake Forest expenses." It is an entry transferred from City Private Bank Jan'y 6, 1874, receipts for cameleias and $4,000 for rents from Nixon & Colehour, covering a part of the years 1873 and 1874. These are the additional items included in the balance of $83,438. I now pass on to the remainder. The next item reads (journal, 228) $700. It is for a note which I received from the Triumph Planing Machine Co. in satisfaction of a judgment for rent May 20, 1878, and which I gave to the Au Sable Quarry Co. The next item reads (journal, 228) $2,000. The $2,000 is for money collected of the Lake Forest Hotel and Manf'g Co. and loaned by me to John Reid on Aug. 4, 1875. The next item reads (journal, page 229) $330, and is for a note received M'ch 25, 1879, from Corrugated Elbow Co. for rent for Oct., Nov., Dec., 1878; sixty-day note. The next item reads (journal, 232) $1,727.94, balance due the estate from the Lake Forest Hotel — Manf'g Co., collected Sept. 4, 1875. The next item reads (journal, 232) $200, and is for a check given M'ch 21, '74, to S. D. Ward on City Private, assumed by Alex. White, not being able to account for the same. The next reads (journal, 234) $2,000, and is

for rent collected from C. L. Rice & Co. Oct. 19, 1878; Nov. 16, 1878, and Dec. 11, '78.

On the credit side the first item reads (journal, page 230) $10.78, and is for moneys expended Oct. 18, 1875, by John Reid on 5th avenue b'ld'g. The next item reads (journal, 232) $2,000. This is to balance an erroneous entry May 28, 1874, in journal, page 225, the rent moneys being deposited in Traders' Bank, and not appropriated by me, but charged to me. The next item reads (journal 233) $863.84, and is on account of rents formerly charged to me, but paid at the time in notes that came to the hands of the estate not received by me, but charged at the time. The last item reads (journal, page 233) $1,021.25, and is to balance erroneous entries for rent for the year 1877, substantially as the preceding item.

Q. I see on these books a currency account, which, in the aggregate, amounts to about $27,500 debits and about $12,200 credits. Please explain the general nature of that account.

314 —. The account was commenced about May 3, 1872, and continues till Feb'y 26, 1879. When my folks or myself needed money I would generally draw a check for the same and charge the same to currency, and the credit side shows how the same were expended for the estate of the family. For example, see page 101 cash book, under currency. There is an expenditure of $1,549.49 for family and estate expenses, such as telegraphing, groceries, blacksmith, dry goods, meat, butcher, servants, hotel, and traveling expenses, etc.

Q. Under what heading are your personal expenditures individually and officially charged or noted?

A. My individual expenses are under the same heading as my mother, brother, and sisters, namely, family expenses. My official expenses would be under the head "estate expenses." If it was for the erection of a building it would be charged to construction account of that particular building. I kept various other accounts; for instance, taxes, rents, etc.

Q. Have you ever been credited or paid anything by way of commissions, administrator's services, or for incidental expenses in managing the estate?

A. In the settlement of July, 1879, with my folks such expenses were taken into account, when I received from them receipts in full of all demands. I received during my administration at various times amounts of money for my estate — incidental expenses as administrator.

Q. Have you ever received, charged, or been credited with anything for above purposes outside of what you stated; if so, what and when?

A. Not that I remember of.

Q. What business relations did the estate entertain to the Lake Forest Hotel and Man'f'g Co.?

A. At the time of the death of my father we had sixty shares of its capital stock at $100 a share.

Q. Was that stock fully paid for when your father died?

A. No, sir.

Q. How much by way of assessment or otherwise have you since paid on the same?

A. $10,903.14. I paid them at various times.

Q. By whose order or authority?

A. It was assessable stock and liable to forfeiture if the assessments were not paid, and I paid it.

Q. Did your mother, sisters, and brother consent?

A. I think they did.

Q. What became of that stock?

A. March 10, '75, it was exchanged for real estate in the city of Lake Forest, Lake Co., Ill.

Q. Why?

A. The company decided to divide their property among the stockholders.

Q. In whom was the title to the real estate taken?

A. I think in my own name.

Q. Why?

A. For convenience sake. I do not know whether my folks were spoken to with reference thereto. If I remember, I was not in the city at that time.

Q. What became of that real estate?

A. I exchanged it for the Jenison Heating and Ventilating Co. stock.

Q. Is that the same stock which you of late years transferred to your mother in July, 1879?

A. Yes, sir.

Q. How much money did you loan to said Lake Forest
315 Company prior to its dissolution?

Objected to.

A. I cannot say without looking; it will take some little time to do so.

Q. I request that you should enquire and inform us by the next adjournment.

Q. By whose authority did you make such loans?

A. By my own.

Q. What did you get on making such loans?

A. 10 per cent. I think it was. It was an open account. I think finally I received a note from the company for the moneys advanced. I was acting as the treasurer of the company at the time, and Co.'s bills had to be paid, there being no money in the treasury.

Q. Were yourself and family at the time living at Lake Forest?

A. Yes, sir.

Q. I see on your book an account called Lake Forest expenses. Explain its general nature.

A. It commences Sept. 11, 1872, and ends May, 1876. On the debit side it shows an aggregate of $5,328.85; on the credit side, $1,256.92. The family resided for a number of years at Lake Forest, and the expenses that were necessary to run the place were charged to this account. The account covers carpenter work, plumbing work,

mason work, taxes, gardening, hardware, painting, boiler repairs, sidewalks, etc.

Q. Give us half a dozen items over $200.

A. Sidewalk, $250; taxes, $317.22; painting, $426.87; boiler repairs, $279.88; sidewalk, $235.10; taxes, $258.54.

Q. Does that account show any expenditures for hired labor or servants or matters appertaining to the household?

A. I think not.

Q. When was that place sold?

A. I think in the summer of 1876.

Q. Has the family had a home of their own since?

A. No, sir.

Q. What were the reasons that the Lake Forest home was sold?

A. The family desired it.

Q. Why?

A. The principal reason was, I think, because they were tired living there.

Q. Was it not a beautiful home, generally spoken of as such?

Objection.

A. Yes, sir; it contains 7 or or 8 acres, I think.

Q. What did you sell it for—what did you get for it?

A. Real estate and a certain promissory note for about $5,000.

Q. Will you please give us the entry of this sale as it appears on your book?

A. Real estate debtor to real estate, May 13, 1876, exchanged with Harvey M. Thomson lots 171 & 172, in the city of Lake Forest, Lake Co., Ill., on which was situated family residence and out-building, receiving the following real estate in part payment therefor. Then follows a description of the real estate, together with the following entry: Bills receivable dr. to real estate, $5,000. Received of Harvey M. Thompson, as part payment of Lake Forest homestead, note of Robert McClelland and Charles E. Jenkins, dated May 9, 1873, 4 months, 6 per cent. interest, $5,000.

Q. Have you ever collected this note?

A. No, sir.

Q. How much has the estate or yourself realized from the real estate so conveyed to you, and when?

316 A. Nothing that I know of, so far as the estate is concerned. I personally borrowed $5,000 on the major portion of the real estate so conveyed from Dr. Quinlan, of Chicago, on my note, secured by mortgage on this property. I understand that it has since been foreclosed.

Q. Why did you at the time of the sale take a note that was long since overdue and discredited?

A. Because Harvey M. Thompson, to whom we sold the place, guaranteed its collection in writing. I understand he gave my folks certain property for the same.

Q. What did you mean the other day, in the course of your examination at Barker's office, when you said, "You knew the judges, and especially Judge Drummond, well?"

Objected to.

A. Mr. Cotzhausen, the complainant in this case, remarked that he knew Judge Drummond well, and that Judge Drummond would become acquainted with me sooner or later—words to that effect. I then stated I also knew Judge Drummond, meaning that I knew of his reputation as an upright man and a judge of ability, and that I did not fear any testimony that I might make in this case would be misconstrued. That is what I meant.

Q. Do the judges or either of them know your old home at Lake Forest?

Objected to.

A. Not that I know of.

Q. Is it not true that that place was generally known and reputed as one very expensive to maintain?

Objected to.

A. Not particularly so, I think.

Q. Was not the real and true reason of your family's disposing of this house that it was found to be what Mr. Barker the other day called an elephant *at* your hands?

Objected to.

A. Not particularly so, I think. As I have stated, they desired to change their residence.

Q. What were the relations of your family to W. S. McMicken?

A. He is my uncle. He lives at the city of Aurora, Ill.

Q. What for did the family in the latter part of 1875 borrow from him $70?

A. I don't remember.

Q. Look at page 227 of your cash book and refresh your memory.

A. I do not remember the circumstances at all. I have no doubt it is true, but the book does not refresh my recollection.

Q. Is he the same McMicken from whom you borrowed $8,000 about the year 1878?

A. He is the same McMicken. I don't remember about the time. His wife is a sister of my mother's. His business at present I do not know. I do not think he is engaged in any business.

Q. Is there on your book any account showing the receipts of rents and from other sources the income of the estate?

A. Yes, sir.

Q. Will you please inform us how much the receipts were from all such sources until the 1st day of January, 1875?

A. ——.

THURSDAY, *Aug. 3rd*, 1882.

Examination of ALEXANDER WHITE continued:

317 Q. Will you please answer the question last propounded yesterday?

A. The receipts for rents up to Jan'y, 1875, were about $34,000.

Q. Were those the gross receipts or not?

A. I think they were the net receipts, as the expenses of the different buildings were charged to the expense account of the different buildings.

Q. Can you not answer the above question definitely and beyond all doubts while your books, vouchers, statements, etc., are all before you and at your command?

A. I can answer definitely as to most every rent charge which I have examined. If I had the rent statements before me I could tell as to them all.

Q. Look at the item on such rent account, ledger, page 114, $351.66, which is there entered as a receipt of rent, and which refers to journal, page 222. Will you please refer to your journal and tell us what that $351 consists of?

A. It's Warren Ave. expenses, due to rents, and is what Mr. Kalck and Hill paid out on cottage expenses from rent moneys.

Q. In other words, what is entered on such rent account as rents received was altogether expended in improvements and repairs; is that correct?

A. Yes, sir.

Q. Now, take another item on such rent account; for example, the entry on ledger, page 114, for $700, receipts referring to journal, page 223. Was that not a note which you took in satisfaction of a judgment obtained against the Triumph Planing Machine Co.?

A. It was, and reads A. White dr. to rents.

Q. Now, take another item—ledger, page 113, $367.54, entered as rents received. Was that not made up of two notes of $100 and $267.54, taken from various parties for cottage rents and charged on the journal to bills receivable?

A. Yes, sir.

Q. Now, can you not point out, by aid of those books which you prepared in 1878 and 1879, whether the expenses for repairs and ordinary improvements are included in said rent account or deducted therefrom?

A. Yes, sir; as to most all the expenses.

Q. Why is it that the gross amount of notes taken is so entered as receipts without regard to the expense, loss, or uncertainty attending them?

A. They were so small in amount.

Q. Did the estate collect the rent notes so taken?

A. Some they did and some they did not, I think.

Q. Are you ready now to give us the amount of your loans to Lake Forest Hotel and Man'f'g Co.?

A. Yes, sir; it aggregates about $8,000, which is as follows——

Q. Have you prepared a list of the same?

A. I have; and now present it.

Offered Complainant's Exhibit 7.

Q. Will you tell us what your books show as to a certain assessment of $500, under date of Oct. 16, 1872—to what account the same appears to be charged on the cash side?

Objected to, as the books are the best evidence.

A. To the Lake Forest Hotel and Man'f'g account. I kept an account with them with said company.

Q. Does that money so expended appear on said books to be charged to the estate; if so, how?

A. Yes, sir; in the same way as every other account charged to the estate appears.

Q. Point out this one.

A. I opened an account with them as I opened an account with others.

318 Q. I want to know definitely when and where, on your books so prepared, this $500 assessment appears to be charged to the estate or credited to yourself in your account with the estate.

A. On page 5 of the cash book is a portion of my account, as administrator of the estate, with the City Nat. Bank of Chicago. Oct. 16, 1872, appears this item: Lake Forest Hotel and Man'f'g Co. paid 5 per cent. assessment by check No. 42, $500. See voucher and so on with the other assessment.

Q. Do not on the journal entries in this form repeat themselves as to the whole of the items for assessments and loans?

A. Yes, sir—I did not understand the question; read it again. No, sir.

Q. When you say "No, sir," are you not referring to entries on the journal made by way of subsequent corrections on later pages?

A. I think I am, as I have referred to the journal.

Q. Down to the item of $1,000 on your list and up to the subsequent entries by way of supplement all items appear on the journal in the same form as the first $500 item. Is that correct?

A. I think not.

Q. Now, you have continuously confined yourself to the account of the Lake Forest Hotel and Man'f'g Co. as appearing on your books. I wanted to know when and where these various items so paid for assessments appear on your books to be charged to the estate and credited to yourself. Can you not answer that question?

A. My books are an account of myself with the estate, and among the accounts is the Lake Forest Hotel and Man'f'g Co. acc't.

Q. Is that the only one on which those amounts appear? If there are others call our attention to them.

A. Some of them were charged to myself.

Q. Give us the entries to which they refer—date, amount, and journal page.

A.—

Journal, page 226—M'ch 21, 1874				$200 00
" " " Jan'y 25, 1875				25 00
" " 227—Sept. 15, 1875				82 00
" " " Dec. 2, 1875				75 75

That's all.

Q. What rents did you receive from the Fifth Ave. building for the years 1877 and 1878?

A. The rents from that building together with other rents all in one account under "rents account." It would take me some time to separate them.

Q. What were the repairs and improvements on said property for the years 1877 and 1878?

A. The Fifth Ave. b'ld'g expense account for those years is about $1,200. The construction is about $1,000.

Q. How much did the boiler, engine, elevator, and other appurtenances cost which you put in when the American Oleograph Company was about to move into the building?

Question objected to.

A. Perhaps $2,500 or $3,000. That's just my idea of the cost—a rough guess.

Q. It was a very fine engine you put in there, was it not?

Objected to.

A. I considered it a good engine; I don't know as you would call it a very fine one.

Q. Please point out, by aid of your books, where that expenditure is charged or credited.

A. It does not appear on the book as far as I can see.

Q. Did you sell any oil paintings belonging to the estate?

A. Yes, sir.

Q. Outside of those mentioned in your administrator's account?

A. I find from the books that I exchanged some for another
319 picture and money.

Q. Did you, about April 27, 1878, buy for the estate a picture from Gustav Reinhardt for the price of $3,500?

A. I exchanged 7 paintings with him, for which he allowed $2,750, and we paid him $750 in cash, for which we got a painting called "Sheep in a Snow Storm," valued at $3,500. I might state that these, however, — excessive valuations in both instances.

Q. What became of this "Sheep in a Snow Storm?"

A. It is now in Boston; it was sent there, as my folks desired to dispose of it.

Q. Did your mother consent to the disposal of the seven paintings which you gave in exchange?

A. No, sir; she was in the South at the time. She never objected to the exchange.

Q. Where does the $750 appear on your books to be credited you or charged to the estate as an expense?

A. The personal property account was charged — the $3,500, the full amount and estimated values of the pictures.

Q. Does the cash account anywhere show this $750 to have been disbursed? Examine all of them, including family expense and expense account.

A. Page 65 of the cash book reads as follows:

June 14, 1878.	Personal property paid Gustav Reichardt on acc't of painting	$100 00
	Page 67 of the cash book reads:	
Aug. 19, 1878.	Same acc't; account of paintings	100 00
	Page 69:	
Nov. 18.	Same acc't	100 00
	Page 71:	
Dec. 13.	" "	150 00
	Journal, 223:	
Sept. 26, 1878.	Same acc't	200 00
	Page 137, cash book:	
July 20, '78.	Same acc't	100 00
	Making total of	$750 00

Q. Did you, about the year 1872, sell any oil paintings to one Shaughnessy?

A. No, sir.

Q. Did you buy any from Shaughnessy?

A. I did.

Q. Give us the particulars, when, what, etc.

A. Page 225, July, 1872, two paintings, I think it was, $400.

Q. What became of those paintings?

A. I conveyed them by bill of sale to my folks July, 1879.

Q. Did you credit yourself on your books with the amount so paid out for these paintings?

A. I think I did.

Q. Where have these paintings been kept since you bought them from Shaughnessey?

A. Various places at home. One is at home yet.

Q. Did you at another time exchange some paintings for two volumes of photographs, valued at $400? If so, state particulars and time.

A. I exchanged paintings for two volumes of photographs.

Q. What did you do with the photographs?

A. They were sent to my folks at Lake Forest.

Q. These various sales and exchanges were outside of those mentioned in your administrator's report, were they not?

A. Yes, sir.

Q. Why is it that in your report you were apparently so particular as to charge yourself with the price of a cow, calf, and pig and omit those paintings or allusion to the same?

A. They were not intentionally omitted.

Q. When the Lake Forest home was sold by you did your family concur in that sale?

A. Yes, sir.

320 Q. Did they join with you in a deed?

A. I think they did; the deed will show.

Q. How was the title conveyed on part of those under age?

A. If I remember rightly, the same as the others; the deed will show.

Q. Was there a guardian appointed for the minors; if so, who?

A. Not that I remember of.

Q. Was there a guardian appointed for the minors when you made the building contracts for the Fifth Ave. and Lake street buildings, or in whose name was the contract concluded?

Objected to.

A. A few previous questions assume they were minors. I am not certain that there were any minors at the time of that transfer. At the time of the erection of the Lake and Franklin street b'ld'g the contract was made by myself as adm'r, as I remember it.

Q. How were these contracts signed?

Objected to on the ground that the contracts themselves are the best evidence.

A. I think by myself as adm'r; the contract will show.

Q. Pick out that contract, if you please, from your papers and produce it.

A. I haven't it with me; I think it is in the vault at my office.

Q. How many of these contracts are there?

A. 7 or 8 different contracts.

Q. Will you please procure them for our use by to-morrow morning?

A. I will endeavor to do so.

Q. Will you please, by aid of your books, to point out when and in what installments A. D. Reid paid the interest with which you charged yourself in your administrator's account?

A. He paid me the total interest of $8,512.88:

1st installment,	April 30, 1872	$2,440	00
2nd "	Sept. 19, 1872	5,490	00
3rd "	July 2, 1873	582	88
Making the total, as above		$8,512	88

Q. Have you read these figures from your journal?

A. Yes, sir.

Q. When were those journal entries made?

A. The time when those books were written—some time from Sept., 1878, till July, 1879.

Q. When were the principal and interest received of Barker & Tuley's note?

A. On Sept. 19th, 1872, received principal, $2,000, with $15.96 interest. There was a balance due, with interest, of $1,503.64, which was paid for by Barker and Tuley for legal services rendered Alex. White, deceased, making a total of $3,519.60.

Q. Now look at page 229 of journal and tell us what the bill of Mr. Barker was for.

A. It is not Barker. The entry reads as follows: Estate expenses dr. to Barker & Tuley; paid them in settlement — their bill against the estate for following legal services rendered A. White, deceased, which bills were sworn to as correct:

Old account of Barker & Tuley	$899 30
Contesting Franklin St. assessment	38 43
" Warren Ave. paving	193 54
" general tax of '71	195 30
" Warren Ave. paving, Co. court, in '72	95 77
Am't of Barker & Waite's old account	80 30
Total	$1,503 04

Q. Tell us, refreshing your memory from the books, when Dreisslein received his first pay for posting such books.

Question objected to.

321 A. Dec. 28, 1878, paid Chas. Dreisslein $100.00.

Q. Tell us when the continuation or last bank deposit book with the Traders' National Bank became lost.

A. I missed it for the first time when I was first called to produce it by the complainant.

Q. Tell us when the partition suit was first commenced.

Objected to, as the record is the best evidence and will show the date.

A. I think October, 1878. The record will show.

Q. What was the object of commencing such partition?

Objected to.

A. My folks wanted it.

Q. Why; for what reason?

A. They desired the estate divided.

Q. Who was the attorney for the complainants?

A. The firm of Barker, Buell & Barker.

Q. Who was the defendant in the suit, and who was his attorney?

Objected to as the record is the best evidence.

A. I was defendant; the same firm acted as my attorneys.

Q. Isn't it a fact, Mr. White, that that was not a contested but amicable partition?

Objected to.

A. I think it was an amicable one.

Q. Who first suggested the commencement of this partition suit?

A. No one in particular; it was generally desired.

Q. Who first employed Barker, Buell & Barker for that purpose?

Objected to.

A. I think it was my mother.

Q. Now, is it not a fact that as early as the month of October, 1878, your family knew that you were short in your accounts?

A. I do not think so, as I did not know myself.

Q. Did not your family at that time know that your pecuniary embarrassments had caused you to solicit and obtain the joint signatures of your sisters and brother to various monetary obligations?

A. I couldn't say that they did.

Q. Did you inform Mr. Cotzhausen when he one day, shortly after the removal of the lithograph business to your building in Chicago, met you in the shop of the company that your uncle had been with you for several weeks on an accounting, and that it seemed as if your head was all whirling?

A. I don't remember of it at all.

Q. Did your uncle at any time assist you in your accounting or figuring?

A. No, sir; I don't think he was in this city at all for a year or two from the time you speak of. If you refer to——

Q. What do you refer to?

A. If you refer to my uncle, Mr. Reid, of Chicago, he had not been in the city for two years.

Q. Did any of the others (uncles) assist you?

A. No, sir; I never heard of such an accounting you speak of; I don't know what you refer to or mean.

Q. What did you borrow the $8,000 for on note of yourself and brother to McMicken?

A. It was principally to raise money to pay Mr. Cotzhausen.

Q. When was it?

A. Latter part of August or 1st of Sept., 1878.

Q. Why did you not give that money to Mr. Cotzhausen.

A. I did give him a good deal of it; all there was due him at the time.

322 Q. Was this on account of the payment of $5,000 which you spoke of as having assumed?

A. Yes, sir.

Q. Who is this McMicken?

A. My uncle in Aurora.

Q. How did you come to borrow this from him?

A. I wanted money, and because he had it.

Q. Did you ask him for it or did he offer it to you?

A. I asked him for it.

Q. Please state in detail the circumstances.

Objected to.

A. There are no peculiarities, no particular circumstances that I know about it.

Q. Can you not tell us in brief whether you went to Aurora, and how you applied for the money, on what ground and security—in short, the details of this transaction?

A. I remember of going to Aurora and applying to Mr. McMicken for some money. I know of no other way of answering than what I

stated already. I wanted money. I offered *as* extra security to my own name and my brother's. We talked about the time, the amount, the rate of interest, and finally decided on it.

Q. Did you tell him what you wanted the money for?

A. I don't remember as I did particularly; he never asked me.

Q. Did you have the note in your possession when you first went there signed by both of you, or when was it executed? Explain in detail.

A. No, sir; it was executed by me while I was there. I took it to Chicago; he executed it then or guaranteed it; I don't remember which.

Q. When was this? Give us the date; refresh your memory by your books.

A. About September, 1878.

Q. Can you not refresh your memory by your books as to the precise date?

A. I don't think it is in my books. I don't see it.

Q. How much money did you get from McMicken on this note in cash, and how was the balance of the loan settled for?

Objected to.

A. Cash, over $5,000 cash. I can't say exactly. I have a memorandum of every cent of it. The balance was acre property in Will county, Ill.; some stock in the Au Sable Quarry Co.

Q. Is that the same stock and lands which you conveyed to your mother in July, 1879?

A. The same stock, but not the same land.

Q. What became of the land?

A. I still have it.

Q. What is it worth?

A. I don't think it is worth anything to me.

Q. Why did you not dispose of it before?

A. Because I considered the title imperfect or not good.

Q. What was its estimated value at the time at which you took it on such loan?

A. I think it was something like $600. It may have been $300.

Q. What was that stock worth?

A. It may have been worth 50 cts. on the dollar; in the aggregate, $3,000.

Q. Did you know this quarry before you took that stock?

A. Yes, sir.

Q. How much have you ever realized on that stock?

A. Nothing.

Q. What is the reason that you so invested in it at this time?

323 A. Well, Mr. McMicken did not care to hold it longer, and as an extra inducement to make the loan I offered to buy it from him if, instead of taking cash, he would put it in a note.

Q. What interest did the note bear?

A. I think 8½ per cent. per annum.

Q. Why did he not loan this money to you when you were at Aurora and before your brother had signed it?

A. That was part of the contract, to have my brother sign it; I think, by the way, he did let me have $1,000.

Q. Is it not a fact that already at this time a good deal of your paper was in the hands of brokers and other parties in Chicago which did not find a ready market?

A. I don't remember as to that time or amount.

Q. Did you not go to Aurora because you could not obtain the loan at Chicago?

A. I don't know as I tried to obtain such a loan in Chicago.

Q. What for did you, on Aug. 20, '78, give the note of yourself, Mary S., Annie C., and James B. White to L. C. Paine Freer?

A. If I gave such a note at that time it was to take up another note that had become due.

Q. When was the first given, what for, and by whom?

A. I don't remember as to the time; it was to take up a similar note, if I remember rightly, given by—I do not remember the parties. I do not remember how many of my sisters and brothers were on it.

Q. How often in this way was such loan or note of $2,000 renewed?

A. I don't remember.

Q. To what time does the first origin of this note date back?

A. I don't remember; I think I have all the memoranda.

Q. Can you not refresh your memory as to these notes to Freer from the books before you?

A. I don't find it in the books.

Q. Was the first note of those so given to Freer for cash loaned?

A. No, sir.

Q. What for?

A. Mr. Freer held a mortgage on a piece of property that I bought of the amount of this note in question. The note became due; I couldn't pay it; he extended it for me another year; I couldn't pay it then; he re-extended it on condition—no, no, that's wrong; if I remember—all this is as I remember it. He agreed to give up the note and mortgage if I would give him a note with some of my folks' guarantee; I did so, and he assigned the mortgage to a Mr. Graham, of Chicago. He was selected by me as trustee for my folks, who signed the note. His business at present is an inventor now, I think—devotes his time to inventions; his place of business is, the last I heard of him, in Boston; his first name I do not recall.

Q. Who is holding that note and mortgage now and acting as his agent?

A. He assigned it to my brother; I do not remember the time.

Q. Now, to what time does the signature of your folks on this Freer paper and the trust assignment to Graham date back?

A. I don't remember the day or year. The papers will show themselves.

Q. What for did you give, jointly with James, Elsie, and Mary S. White, on Oct. 3, 1878, a note of $2,000 to James Smith?

A. For borrowed money.

Q. How did said note come to be executed?

Objected to.

A. I wanted money, and I induced my folks, or whoever of them who did unite therein, to unite with me on the note in ques-
324 tion. James Smith is a resident of Buffalo, N. Y. I wanted money and I asked for it at Buffalo.

Q. State the substance of your conversation and how you came to apply to him the details of this loan.

Objected to.

A. I thought he had money to loan. I wanted some money. I asked him for it. He said he would let me have it; he loaned it to me; he said he would let me have it on my security and some of my folks'.

Q. Did he know you and your folks?

A. He did.

Q. Had there been any relation or acquaintance between you before?

A. Yes, sir; I had known him for a number of years.

Q. What was his relation to your family?

A. He was a friend and an acquaintance.

Q. Have you been visiting each other before?

Objected to.

A. Yes, sir.

Q. Where was the note executed by your folks and when?

A. In Chicago, October, 1878, on my return from Buffalo.

Q. Why did he not loan the money to you on your own note?

A. Because it was so much better security.

Q. Had he loaned money to yourself or family before?

A. Yes, sir; he loaned money to myself before.

Q. When, where, and how much?

A. $1,000; at Buffalo, Oct., '77; on my note; no other.

Q. How did you come to borrow this $1,000?

A. For the same reason before stated as to the other loans.

Q. Can you refresh your memory as to this $1,000 note of Oct., 1877, or the joint note of Oct., 1878, by the account books before you?

A. As I borrow for myself—my own purposes—I did not enter it on these books, as was my custom.

Q. Am I to understand that these account books before you show no individual transactions and relate only to your doings as representative of the estate and family?

A. No, sir; they show my receipts and expenditures.

Q. Individual or otherwise?

A. Both as administrator and as the agent of the family.

Q. What were these moneys of James Smith used for; what was done with them?

A. I don't remember.

Q. Can you give us any idea?

A. I know I used them on my own account.

Q. Did you give any securities to your folks for their signature?

A. No, sir.

Q. Do you mean to say that James Smith is no relative of the family and only a particular friend of the house?

A. Yes, sir.

Q. To what time does such friendship date back?

A. Many years—ever since I can remember.

Q. Did it in any way excite surprise with McMicken, Smith, or Freer when you applied to them for money or extensions?

A. I don't remember that they expressed any particular surprise.

Q. Did it in any manner excite surprise with your brother or sisters when you requested their joint signature on the notes or assigned your note and mortgage in trust for them to Graham?

A. I think, as I remember it, they were surprised as to some of the notes, but I told them it would be all right and they would never hear anything more about it.

325 Q. What did they say when asked to sign a renewal note?

A. As to the Freer note, I told them it was sufficiently secured. They hesitated to sign it, but I told them it was all right, and not to be afraid of any trouble about paying it when it became due.

Q. Why did you not ask your mother to join in some of this paper?

A. I did not want my mother to know anything about it.

Q. Why not?

A. I feared she wouldn't permit the others to sign it or them, and the fear would make her nervous and anxious, and that she would ask too many questions about the notes. I remember of being exceedingly careful not to let her know anything about them.

Q. Did you enjoin silence and secrecy upon your brother and sisters?

A. Yes, sir; I remember of doing so.

Q. Which of the debts owing by you in July, 1879, remain still outstanding and unpaid?

A. The McMicken note of $8,500; a note to my mother of $43,256.66; next, a note to the Potter Press Co. guaranteed by me, $4,500; Storrs Bros.' note, $2,500; Hosmer note, $2,500; guarantee on Munson's note, am't unknown, the insurance Co. notes being foreclosed, property sold, and claim satisfied; same as to Dr. Quinlan's note, $5,000; Northwestern Bank note, $1,000; I think a note at the Union Nat. Bank, $1,000, which I forgot to mention in my former examination; different parties, small am'ts; also Cleveland paper account, am't unknown. I don't know whether it is outstanding or not. Various notes to F. W. Cotzhausen; all in judgment, I believe. I think this is about all. In addition I have a memorandum of two notes of $500 each, due the Traders' Bank, paid.

Q. Which of these claims have ever been put in suit?

A. The note to my mother—judgment taken; Storrs Bros.—in judgment; Hosmer note—in judgment; judgment on ins. Co. notes,

but satisfied by foreclosure; same as to Dr. Quinlan note; F. W. Cotzhausen notes—all in judgment, I believe.

Q. What has been done on the judgment in favor of your mother?

Objected to, because the record is the best evidence as to what has been done.

A. I don't know.

Q. What has been done with the judgment of Storrs Bros.?

Same objection.

A. I don't know.

Q. What has been done with the judgment of Hosmer?

Same objection.

A. I don't know.

Q. Which of these judgments have been taken up by order of your family?

Objected to.

A. None of them that I know of.

Q. Did any one of these creditors, aside from Cotzhausen, ever file a creditors' bill?

A. If I remember rightly, Storrs Bros. filed a creditors' bill, but I do not think it was ever served.

Q. How was that matter settled?

A. It has never been settled by me if it has been settled.

Q. Why was that creditors' bill never pushed?

A. I understood from Mr. Bowen that he had made some arrangement with Storrs Bros. about it, the nature of which I do not know.

Q. What Bowen do you refer to?

A. Mr. Chauncey T. Bowen.

Q. Have you brought those building contracts along this morning?

A. No, sir.

Q. Why not?

326 A. I have not had access to Mr. Barker's vault since. I left word at the office to have them sent over here as soon as the vault was opened. I expect them any moment.

Q. How much do you owe Guyton?

A. Nothing that I know of.

Q. When did you settle with him?

A. I never had any settlement that I know of.

Q. How much money did you have in your possession when, after the transfer to your mother, sisters, and brother, you went East?

A. About enough to pay my expenses East; not more than $75 or $100.

Q. What object was there in conveying to Margaret a piece of property separate from the conveyance to the others?

A. The heirs desired it.

Q. Who acted for Margaret at the time?
A. The firm of Barker, Buell & Barker, I believe.
Q. What was the reason stated by either party?

Question objected to because it assumes there was a reason stated.

A. As I remember it, it was left to Mr. Barker.
Q. Did you ask any questions about it?
A. I don't remember of asking any questions in particular.
Q. What was the object or reason of giving all your valuable landed interests to your sisters and brother and a judgment note with doubtful and trifling security to your mother?
A. I know of no other reason than that I owed a certain amount to them, and Mr. Barker, the attorney, decided to put it—to settle it in this way.
Q. Did you ever confer with your mother about it?
A. Never.
Q. Did you ever confer with your sisters and brother about it?
A. Not that I remember of.
Q. Have you ever since talked to your sister Margaret about this conveyance to her and the division so made?
A. I do not remember of doing so.
Q. How much do you now owe S. B. Munson, Jr.?
A. Nothing that I know of; he, rather, owes me.

It is here admitted that on April 6, 1872, Alex. White filed his bond as adm'r in the county court of Lake county, Illinois, in the matter of the estate of Alex. White, dec'd, which bond was in the penal sum of $300,000 and joined by Ann White, Elsie White, and Mary S. White as sureties.

Cross-examination by Mr. BUELL:

Q. What induced you to employ Mr. Dreisslein to go over your accounts, receipts, memorandums, and bank books and prepare the two books of account or memorandums produced by you?
A. I desired to know my exact financial condition.
Q. Did you in that way ascertain it; and, if so, at what time?
A. I did, about July, 1879.
Q. Can you now tell us from those books and from the other memoranda, receipts, and vouchers which you have how much money you received subsequent to the death of your father as adm'r or in the capacity as agent or otherwise which belonged jointly to your mother, sisters, and brother and yourself.

Objected to; not cross-examination, but matter of defense, if any, and also because it has conclusively appeared that the entries on said books were not made at or about the time when they bear date, and that said books are in no way true account books in the
327 ordinary sense of that term nor memoranda in the handwriting of the witness.

A. I can.
Q. Will you please do so?
A. $298,691.29.

By COMPLAINANT'S COUNSEL: What paper is that you just had in you hands when you testified as to the above figures?

Counsel for the def't objects and insists that the complainant has no right to ask questions of the witness while he is being cross-examined by the defendant. It is unprecedented that the cross-examination should be so interrupted.

Compl't's counsel requests an answer to his question.

A. A paper prepared by myself showing the total amount received by me; also the amount paid out and accounted for by me, the balance due my folks by me, and the amount due to the respective members of my family.

Q. Prepared by you when?

Same objection as to last question.

A. Within the last two weeks.

Complainant's counsel now further objects to the testimony of the witness whereby it is sought as above to show the contents of the paper so prepared.

Defendant permitted to resume his cross-examination.

Q. Can you from the same sources tell us the amount of your disbursements as adm'r, agent, or otherwise during the same period on behalf of the estate, your mother, brother, sisters, and yourself?

Same objections.

A. I can.

Q. Please do so.

Same objections.

A. Expenditures amount to $196,810.52.

Q. Have you made from your receipts, vouchers, papers, and memoranda which you have preserved a prepared statement or compilation showing the amount of your receipts and the amount of your disbursements?

A. I have had made such compilation.

Q. What was the occasion of your having made such compilation, and at whose request and when was it made?

A. It was made about two weeks ago at the request of Mr. F. W. Cotzhausen.

Q. On what occasion did he make that request?

A. When he was examining me in this case.

Q. Will you produce that compilation to the commissioner or a copy of it that he may annex it to your deposition?

Objected to because not cross-examination; not called for by the complainant, as not pretended, and being no evidence, but of the de'f't's own fabrication of late date.

Witness produces compilation and marked Def'ts' Exhibit No. 1 and offered in evidence.

Objected to.

Q. Did you offer this compilation to complainant's counsel in this case since its preparation and during your examination; if yea, what did he say or do?

A. I offered it; he took it, looked over it, and said he did not want that.

Q. What moneys did you receive as adm'r from the estate of your father? Specify as fully as you can.

A. In accordance with my final report as adm'r I received the sum of $204,133.44.

Q. How much did you disburse on account of that estate?

328 A. The sum of $114,487.39.

Q. Are those sums of receipts and disbursements as set forth in your report correct?

A. They are to a cent.

Q. During the period from the death of your father until about July, 1879, did you have charge of the real estate which he left as well as the personal property?

A. Yes, sir.

Q. What was the total amount of rents which you received while you so had charge of such real estate?

A. $115,189.82.

The above answer being made from the compilation referred to above, Def'ts' Ex. No. 1, the same is objected to for the reasons there stated, and a motion will be made to strike out the same.

Q. In whose handwriting is the compilation produced by you, namely, Def'ts' Exhibit 1?

A. In my own.

Q. Have you any means of knowing whether that compilation is correct; if so, what?

A. Yes, sir; various checks, vouchers, receipts, memoranda, etc., together with the books referred to, which I have carefully preserved, and which I have produced here on this examination.

Q. Explain what the last item on that compilation means, namely, balance due estate without interest by A. W., $101,880.77?

A. It means that after deducting my expenditures from my receipts there is a balance due my folks, namely, my mother, brother, and sisters, of $101,880.77, without interest.

Q. What did the personal estate left by your father consist of? Enumerate it as particularly as you can.

A. Mostly bonds and mortgages and cash on hand.

The cash on hand was $41,820.37, deposited in the Importers' & Traders' Nat. of N. Y. and the City National Bank of Chicago; then bonds and mortagages about, without interest, 123,100.00; also personal property, as per appraisement bill, 10,532.00; a note of Barker & Tuley, at 2,700.00; and some oil paintings valued at about 12,000.00.

Q. How was your time employed from the time of the death of your father until July, 1879—in the management of your father's estate or individual enterprises, or how?

A. The major portion of my time during that period was employed in my own individual matters and the balance in estate matters.

Q. I see from the memorandum books that you have produced here a currency account. What does that currency account mean? Please explain.

A. When any of us (of the family) needed any money I would generally draw a check on the bank for the amount desired and charge it to currency. That is represented by the debit side. The credit side represents the amount of currency drawn from the bank; the other side the amount accounted for by me.

Q. Which side represents the amount accounted for—the debit or the credit side?

A. The credit side.

Q. What is the difference between the debits and credits there entered?

Objected to.

A. $15,418.32. I meant to say the debit side in my former answer was a statement of the amounts drawn by me from the banks. The credit side was the amount I accounted for to my family.

329 Q. Can you account for the above difference; if so, how?

A. I cannot.

Q. Is it not true that you oftentimes expended money on your own private account with which you failed to charge yourself?

A. Yes, sir; I frequently did so.

Q. Will not this fact, in part at least, account for this difference?

A. Beyond a doubt it will.

Q. I notice in that book an account headed "family expenses." Explain that account, and tell us of what it consists.

A. Mostly household expenses, drawn from the banks by checks and credited to myself.

Q. Did you board with the family, and does that account include your own board and clothing, as well as that of your mother, brother, and sisters?

A. Yes, sir.

Q. What is the sum total of that account?

Objected to; not cross-examination. Witness ought not to be permitted to testify from books and written evidence lately prepared and fabricated by him.

A. $43,196.15, as I now make it out.

Q. Who had the avails of the two notes for $500, payable to the Traders' Bank, which were paid out of the common fund after the settlement with you?

A. I had the avails of the one, and I think of the other.

Q. Who had the proceeds of the several notes that have been mentioned in this examination, namely, the one to Smith, of Buffalo; the one to Lazarus Silverman; the L. C. P. Freer note? Specify each one.

A. As to Smith I had the proceeds of that; the Freer note I got no money on; I received the money on the Silverman note.

Q. Who received the money obtained on the McMicken note?

A. I received it all.

Q. Was the difference in the currency account, which I understand is against you to the amount of $15,000 and over, and the sums of money received on these several notes taken into account in making the settlement with your mother, brother, and sisters in July, 1879?

A. No, sir.

SEPTEMBER 6, 1882.

Cross-examination of ALEX. WHITE continued:

Q. At the time of the settlement, in July, 1879, had you any money to turn over to your mother, brother, and sisters?

A. I had a balance in the Traders' Bank of $346.14, which I turned over to them.

Q. Had you no other money?

A. No, sir.

Q. How much altogether did you owe them? State as near as you can.

A. Over $132,000.

Q. How do you know that you owed them that amount?

A. I know it from my bank books, checks, receipts, vouchers, memoranda books, and other memoranda, which I carefully preserved; also from investments or expenditures that I made on my own individual account in various enterprises in which I engaged.

Q. In those individual enterprises did you make or lose?

A. They were total losses.

330 Q. To what extent?

A. $95,000 and over.

Q. Why did you not credit yourself with the cost of fitting up the Fifth Ave. building for the occupation of the oleograph Co., amounting to between 2,500 to 3,000, as you state?

A. Because I did not pay it. C. A. Rice & Co., who did most of the fitting up, owed the estate a large amount of money for rents, and this fitting up by them was applied on the amount due from them to the estate. There was a running or open account between the estate and them, which was not closed or settled until after the July settlement.

Q. In reference to the deed to J. N. Barker of the Jefferson lot can you not recollect that there was an additional consideration to the one already mentioned by you for that deed?

Objected to — leading.

A. I now recollect that Mr. Barker was to attend to two suits against me, involving some $40,000, then pending in the United States court, brought by the Protection Life Ins. Co., being foreclosure of two mortgages, of $20,000 each, made by me to them on Cook county property.

Q. In your individual business affairs what attorneys did you employ?

A. E. G. Asay, of Chicago; Williams & Thompson, Mattocks & Mason, Moran & English, all of Chicago; A. L. Dow, of Morris, Ill.; Munn, of Joliet; James T. Worthington, of New York.

Q. Why did you not employ J. N. Barker or the firm of which he was a member in your Chicago litigation?

A. Because I did not want him to know anything about my own individual affairs.

Q. Why not?

A. I knew he was the attorney of the estate, and I did not care to have him know anything about — I was doing.

Q. Are all the expenses of maintaining the Lake Forest home from the time of your father's death up to the time it was sold entered in your memorandum books of account?

A. Yes, sir.

Q. Under what head and to what amount?

A. Lake Forest expenses; $4,071.93.

Q. Was that independent of the expenses of the family during that time?

A. Yes, sir.

Q. Are all of the family expenses, including yourself as a member thereof, from the time of your father's death until the time of the settlement, in 1879, entered on your books of account or shown by the vouchers and checks produced by you?

A. Yes, sir; all but the account from the middle of May to said settlement.

Q. What is the amount of those family expenses?

A. $43,176.15. I would here state that since my last examination I find in my memorandum book, under the account — family expenses, that I overlooked a credit of $20 in my former statement.

Q. Can you tell the amount received and paid out by you from the middle of May to the date of the settlement, in July, 1879?

A. Since my last examination I have obtained from the Trader's Bank — statement of account during that period, wherein I received $2,800 and paid out all but the balance of $346.14, which, I have before stated, I turned over to my folks.

Q. Was the difference between the amount on hand in the bank— namely, $346.14—and $2,800 all that you received and paid
331 out during that period?

A. On May 19, 1879, there was a balance in the bank of $1,245.96. The amount I received since that date was $2,800, making $4,4045.96, all of which I paid out except this balance of $346.14.

Q. Look at your memorandum books and tell us whether or not you were there credited with the expenses of collecting rents, including the cottage rents on Warren Ave. spoken of in your direct examination.

A. Yes, sir; they were charged to Warren avenue expenses, $310.03; that was one charge of others that appear on the books.

Q. How much is the total with which you are there credited with Warren Ave. expenses?

A. $2,599.23.

Q. With what amount are you there credited with for expenses on Peoria St. cottages?

A. $1,168.95.

Q. In your direct examination you were referred to an item of $351.56 entered on journal, at page 222, as rent received, which was in fact expended. Are you anywhere credited with that expenditure?

A. Yes, sir; it was charged to Warren Ave. expenses.

Q. Who had the benefit of the Triumph Planing Machine Co. note for $700, charged to you?

A. I had the benefit of it. I gave it to the Au Sable Quarry Company, which page 228 of the journal shows.

Q. In your final settlement, in July, 1879, with the heirs of your father's estate were you credited with bills receivable; if yea, to what amount?

A. Yes, sir; to the amount of $7,798.62. This includes the $5,000 McClellan note, which was taken as part payment for the Lake Forest homestead. The other bills were for rents.

Q. You were asked in your direct examination why you omitted in the probate report certain paintings. Were such paintings omitted in that report?

A. Upon examination, in my annual statement I find the following: The foregoing is a full, true, and perfect account of all money and property that has passed through my hands or come to my possession or knowledge as administrator of the estate of Alex. White, deceased, except some paintings that I have turned over to the heirs.

Q. Can you now recollect who had the benefit of the two $500 notes discounted at the Traders' Bank and paid by James, your mother, and sisters after the July settlement?

A. Yes, sir; I had the benefit of both.

Re-examination:

Q. What have you been doing for a living since the last adjournment, in the beginning of August?

Objected to.

A. I have been assisting my brother in his business.

Q. Has your brother been out West since that time?

A. He has been West about two weeks, I believe.

Q. Have you attended to the affairs of the estate while he was gone?

Objected to as assuming there is an estate.

A. I don't understand what is meant by estate.

Q. I mean and refer to the estate standing in the name of your mother, brother, and sisters.

A. In part I have.

Q. Who has attended to the other part?

A. Mr. Barker, the attorney.

332 Q. How much, by way of salary or other compensation, have you received from your mother, brother, and sisters for six months last past, more or less, in consideration and return of your assistance and services in matters of the estate?

A. I do not know as I have received anything for such services.

Q. Have you the promise of any consideration, or have such services been gratuitously rendered?

A. I never was promised any consideration. I do not consider them to be gratuitous.

Q. What is it you expect—how much?

A. I have never stated to them what I expect. I never thought about what my services are worth.

Q. What was the arrangement with Storrs as to the judgment against yourself and the creditors' bill filed in that behalf?

A. I had no arrangement with Mr. Storrs.

Q. I have not asked you what arrangement you made, but what the arrangement was which was made.

A. I couldn't say.

Q. Do you mean to say you have no knowledge, information, or belief as to such arrangement?

A. I would here restate what I formerly stated in answer to a similar question, namely, that I understand from Mr. C. T. Bowen that he had made arrangements with Mr. Storrs concerning said judgment. He never stated to me what the arrangements were.

Q. Did you inquire what they were?

A. No, sir; I did not consider it any of my business.

Q. By whose request or instructions had Bowen acted?

A. I remember of writing to Mr. Bowen that I thought it his duty to pay said judgment. I never gave him any particular instructions.

Q. By whom is said judgment owned or controlled at present?

A. The last I heard about it, it was controlled by Mr. Bowen.

Q. What is Bowen's address?

A. I do not know.

Q. What was his last address that you know of?

A. Park Ave. Hotel, New York.

Q. Explain to us the origin and nature of the Silverman note and loan.

A. As I now remember, it was this: C. L. Rice & Co. desired money; I also desired money; the said firm made a note; I guaranteed the same; Silverman discounted it; the proceeds went to both of us; I do not remember the proportion. The note was guaranteed by members of my family, I believe; at least they were held in some way legally bound to pay in case the firm or myself did not.

Q. State the amount and date of the note so given.

A. I have no memorandum with me here concerning it. My present recollection is for about $2,500 or more, for perhaps 60 or 90 days. Some part in the summer of 1879 it was dated; perhaps May or June.

Q. Who discounted it with Silverman?

A. I did.

Q. What did you do with the money?

A. As I stated, a portion of it went to C. L. Rice & Co., a portion to myself. I couldn't say where my portion went to—whether as a loan to the American Oleograph Co., or whether to take up other notes of mine or maturing, or what. I couldn't say definitely at present where the money went to.

Q. I want to know how much of that money C. L. Rice & Co. got and how much yourself.

Objected to.

A. I haven't any idea.

333 Q. Which one or ones of your family guaranteed that paper?

Objected to because previously asked and answered.

A. I do not remember the particular names. It can be easily ascertained from the note.

Q. Under what circumstances and on what plea did you obtain the signature thereto of members of your family?

Same objection.

A. I do not remember the particular circumstances.

Q. If not the particular circumstances, give us some general idea as to whom you approached on the subject and how?

A. I don't remember about this particular note.

Q. Had the signature of members of your family by this time to papers of yours become so frequent and common a transaction that it left no more impression on your mind and present recollection?

A. This question recalls to my mind that I said they would never hear anything more about it; that C. L. Rice & Co. would pay it, as they had assured me of that fact.

Q. I want to know why in the years 1878 and 1879 more or less real estate belonging to you was standing in other people's names.

Question objected — because it assumes a fact.

A. I would have to be first informed what real estate is referred to before I could answer the question.

Q. For example, Messrs Lind or McMicken?

A. I had property referred to as Mr. Lind's name deeded to him, because I did not want any members of my family to know that I was speculating in acre property. I would like to be informed what particular piece of property is *to* referred to as the McMicken property.

Q. At what time did you commence to merge your individual bank account and funds with those appertaining to the estate or yourself in a representative capacity?

Objected to because it assumes that such was the fact.

A. I don't know as I ever merged it.

Q. When did you discontinue your individual bank account?

A. A few months after I opened it. I opened an account about the summer of 1872, and closed it the latter part of the year.

Q. Why is it that in inventoring the estate there was cash on hand, as per inventory returned, $37,687.25, and that in your final account you charged yourself with $41,820.37 under date of April 9, 1872?

A. If I remember rightly, there was about $45,000 drawn from the bank just previous to my father's death, which was not included in this amount of $37,687.25, per inventory, but was included in my final report.

Q. Now show us by aid of bank books, memoranda, your journal and ledger of 1878, 1879, gotten up by Dreisslein and yourself, when and how these $41,820.37 came to your hands.

Objected to.

A.—

Per dep. Importers' and Traders' Nat. Bank, May 1, 1872, shown by bank book	$19,653 02
Per City Nat. Bank deposit shown by my cash book, page 2, taken from my City Nat. Bank book, May 1, 1872	17,167 35
Per cash on hand in house at death	5,000 00
That makes the total	$41,820 37

The last item of $5,000 appears thus: Page 226 of the journal, A. W. dr. to estate, deposit of part of $5,000 check on hand drawn on M'ch 18, 1872, in City Private, $2,000. Page 100, cash book, under currency account, M'ch 18, 1872, charged to estate expenses, being amount on hand and not deposited of the $5,000 check this date, $3,000.

334 Q. Let us have a copy on this record of the various entries, and all of them in the language of your books, pertaining to that $5,000 item.

Objected to by complainant's counsel to copying detached portions of the memorandum book, insisting that the book itself is the best evidence.

—. Page 226 of journal:

A. W., Dr., to estate.

Deposit of part of $5,000 check on hand (drawn on M'ch 18, '72) in "City Private," $2,000	$2,000

Page 100 of cash book:

1872. Currency, page 100.

M'ch 18. Estate, being amount on hand and not deposited of $5,000 check this date	$3,000

Page 1 of ledger:

Journal, 226, $2,000.

'72.			
May 1.	City Nat'l, 2	17,167	35
'72.			
	Imp. & Traders', 14	19,653	02
M'ch 18.	Currency, 100	3,000	00
'73.			
July 15.	City Nat'l, 8	2,000	00

Q. Were not the above entries on journal made at a late date on page 226, by way of correction and former omissions, and then transferred to ledger accordingly?

A. They — made some time from Sept., 1878, to the July settlement.

Q. Do these entries not appear on your books as having been supplied after the general bulk of the transactions were entered thereupon and by way of supplying apparently former omissions?

A. In making up my account the amount was unaccounted for at first and finally ascertained.

Q. Where on your books do the expenses attending last sickness, funeral, and others appear to be charged or credited?

A. Under currency account, page 101, of cash book. These expenses were paid from the $5,000 cash on hand and charged to estate expenses.

Q. Outside of the ordinary expenses of funeral, administration, medical attendance, and legal service account of Barker & Co. were there any debts chargeable to the estate and unpaid at the time of your father's death?

A. None of any account.

Q. How much has there ever been allowed to you while in charge of the estate for personal use and expenses?

Objected to.

A. Nothing allowed to me in particular; no definite amount.

Q. How much has there ever been allowed to you while in charge of the estate or subsequently for your services, commissions, or otherwise as administrator of the estate or agent and representative of the heirs' family?

A. No definite amounts. As I have before stated, it was all taken into account on my final settlement with my folks, in July, 1879.

Q. How was the amount of $64.178.12 credited in your final account as having been expended by order of widow and heirs in building 83–87 5th Ave. made up and from what?

A. Well, it was made up from the bank books, bank checks, vouchers, receipts, memoranda, — memorandum books, which I have preserved.

Q. Up to what time was said amount expended and figured?

335 A. Up to Dec. 13, 1878.

Q. Was there a detailed account of said expenditures entered on your ledger under the title "Fifth Ave. construction;" and, if so, what is the sum total there charged to said account up to its close, in Dec., 1878?

A. There is such a detailed statement, on pages 14–17, inclusive, of ledger, amounting to $62,028.12.

Q. What was the amount so expended, according to said ledger, up to Jan. 21, 1875?

A. About $58,000.

Q. Was there a detailed account on said ledger as to similar expenses in constructing 215 & 217 Lake St. and 39 and 41 Franklin St?

A. Yes, sir; see pages 10 & 11 of ledger.

Q. To what date and to what amount?

A. July, 1877, amount, as per final report, of $39,777.27. I would here add that the difference between the Fifth Ave. construction account of $64,178.12 per final report and $62,028.12 per my ledger, namely, $2,150, was the estimated cost of further improvements in the building, the engine, and boiler.

Q. What was the amount expended, according to your books, on Lake and Franklin construction up to Jan. 21, 1875?

A. About $39,000.

Q. Give us the precise amount as per books.

A. As I figure it, $38,850.90.

Q. Who was charged or paid for the expense of the elevator put into 5th Ave. building in fall of 1878?

A. It was added to the 5th Ave. construction account per final report.

Q. Give us the corresponding entry, if there is any.

A. As I stated in my last examination, it does not appear on my memoranda books, as there was an open account between the firm who furnished said machinery and the estate. It was not adjusted until after the July settlement. I refer to C. L. Rice & Co.

Q. Who paid for the shafting and belting put into the shop of the American Oleograph Co., or to whom was the same charged?

A. It was a part and parcel of the C. L. Rice & Co. contract—furnishing engine, boiler, etc.

Q. Was not the belting and shafting settled for by the American Oleograph Co.?

A. Not that I know of.

Q. Were you interested in the purchase of the stock by Guyton for a considerable time before you assumed payment of his notes by special agreement with Mr. Cotzhausen?

Objected to.

A. I wouldn't say considerable time.

Q. Were you not in fact so interested and a party to said purchase from the very first?

Objected to.

A. No, sir; from the very first I had no intention of such ownership.

Q. Is this an account, made out and furnished by you during 1881, as to loans and investments by you in connection with the business of said oleograph Co.?

Objected to.

A. I remember of sending this statement to Mr. Sylvester, I think it was, Mr. Cotzhausen's law partner, or to Mr. Cotzhausen, to show him that the American Oleograph Co. owed me $4,500 by way of advancements to said company made by me and also advancements of others assumed by me at various times.

Q. Do you mean to say that statement is correct?

336 Objected to.

A. It is correct, except perhaps as to the first item of $1,650 advanced to the company by me. That item is still in dispute between Mr. Guyton, Mr. Bowen, and myself.

Q. Why?

A. That amount was sent on from New York, as I understand it, by Mr. Bowen to apply on the $5,000 cash payment required of Guyton by Mr. Cotzhausen.

Q. Is it not a fact that those amounts represent contributions by yourself towards the first cash installment on purchase of stock?

Same objection.

A. No, sir; each item shows for itself what it is for, but I do not notice any charge on account of the $5,000 with exceptions above stated.

Said account is now offered in evidence and marked Complainant's Exhibit No. 8.

Objected to.

Q. While you have kept such close and minute accounts of all matters and dealings, as shown by the statement last presented and the memorandum books made by yourself and Dreisslein, why, then, did you fail to enter on the books produced any of the various notes given by yourself and other members of your family throughout the years 1877, '78, & '79?

A. Those notes were for my own individual account and benefit, and they do not on that account appear on my memorandum books, as those books represent my account as adm'r and agent.

Q. Are not your so-called individual matters constantly mixed up in the account shown on your books under the heading Alex. White with those transactions conducted in an official character?

A. No, sir; I should say not. They are very clear and simple.

Q. Do not a large number of the credits and deposits referred to in said account arise from returns of what you call private or individual matters and speculations?

Question objected to, as the books themselves are the best evidence.

A. Yes, sir.

Q. Is not the whole credit side, or the greater part thereof, made up from such sources?

Same objection.

A. It will take me some time to answer such questions, but from cursory examination I should think it was so.

Complainant's counsel now offers in evidence said account, appearing on the ledger on pages 52–55, inclusive, which is marked Complainant's Exhibit No. 9.

Defendants' counsel objects to taking a detached portion of the memorandum book as evidence without the entire book.

Q. Now give us, if you please, the precise time and title under which the partition suit frequently spoken of is filed.

—. The bill was filed Oct. 11, '78. The title of the suit is: Circuit court of Cook Co. General No. 29937. Ann White, Elsie White, Mary S. White, Annie C. White, and James B. White, *vs.* Margaret White and Alexander White, Charles W. Colehour, and William K. Nixon.

Q. Were these two telegrams now shown to you sent by you to Mr. Guyton?

Objected to.

A. One signed A. White was sent by me, I think; perhaps the one signed W. Murphy also, although I do not remember
337 positively of sending either.

Q. Was not the name of W. Murphy repeatedly assumed by you in sending dispatches to Guyton?

Objected to.

A. I remember Mr. Guyton suggesting some name. I could not say whether the name of W. Murphy or not; likely it was W. Murphy.

Complainant's counsel now offers in evidence said two telegrams, marked Exhibits 10 and 11, respectively.

Objected to.

Q. Look over these five letters and see whether they were written by yourself.

A. They are all in my handwriting.

Complainant's counsel now offers in evidence said several five letters, marked Complainant's Exhibits 12, 13, 14, 15, and 16, respectively.

Objected to.

Q. Why does the compilation lately made, Defendants' Exhibit No. 1, not correspond to the adm'r's final account?

A. The administrator's account was made up from a similar compilation. There were many accounts charged in the compilation which should not be charged in my account as adm'r. As adm'r I had nothing to do with them; for instance, rent account.

Recross-examination:

—. Does your memorandum book of account, to which reference has been made so frequently, show the actual amount expended by you in the construction of the 5th Ave building?

A. Yes, sir; it does.

Q. What was the total amount so expended by you?

A. $62,028.12, construction account.

Q. In your final report as administrator with what amount were you credited as having expended in the construction of that building?

A. $64,178.12.

Q. Then you were credited too much by the difference between those two sums, were you not?

A. Yes, sir; I was.

Q. How much did you pay for the real estate the title of which was received in the name of Sylvester Lynd?

A. $35,024.44.

Q. With what means or money did you pay for it?

A. With the estate money.

Q. What did you pay for the property the title to which was taken in McMicken's name?

A. The Jefferson piece cost me $2,500; the State street property about $2,300.

Q. With what money did you pay for that property?

A. With the estate's money. I credited——

Complainant's counsel insists upon witness finishing his answer.

I was about stating what I called the State St. account, but, as I gave the balance of the acc't, namely, $2,300, I did not think it necessary to state the debits and credits, but will now do so, if complainant desires it.

			Credits.
May 28, 1873	3,500 00	M'ch 6, 1874	1,000
April 4, 1874	51 80	Jan'y 21, 1874	500
July 8, 1875	100 00		
Dec. 22, 1875	225 00	Total	$1,500
Dec. 22, ——	10 85		
Total	$3,887 65		
Balance	$2,887 65		

338 Q. Why did you take or put the title to those pieces of property in the name of McMicken?

A. The Jefferson was put in McMicken's name to secure him on a bond that he signed for me; also the State St.

Q. State what individual enterprises you entered into in which you used the money of the estate. State particularly, and the amount of losses sustained by you in each.

Objected to; not cross-examination.

A. My first individual enterprise was the purchase, Oct. 4, 1873, of S. 20 acres of the W. ½ of S. E. ¼ sec. 30, T. 39, R. 13 east, 3rd P. M., for $1,156.76; also the E. ½ of S. E. ¼ sec. 22, T. 38, R. 13, Cook county, Ill., purchased May 7, 1873, costing $35,024.44. I mortgaged —. The 80 acres were deeded to S. Lind in trust. These two pieces were mortgaged for $20,000 each to the Protection Life Ins. Co. of Chicago. I understand that they have since been foreclosed for those sums. I further invested in quarry property in Grundy Co., Ill., the sum of $19,269.49. This was also estate money. Said quarry property has been mortgaged for about $4,000, and has been a total loss to me—this investment. I have also loaned to various individuals various sums at various times, amounting to over $20,000. They were total losses; also cost of American Oleograph Co. stock of about $3,700; also loans to said company of about $3,000; also total losses.

Q. Did you have any money or property of your own at the time of your father's death?

A. No, sir.

Q. Did you inform your mother, brother, or sisters of the making of these investments, or either of them, prior to the time or about the time of making settlement of the affairs of the estate?

A. They knew of none of these investments until long after they were made. Some of them they do not know even to-day.

Q. State, as near as you can recollect, when you informed them, and whom of them, of any of these investments made by you.

A. They were informed of most of these investments by others than myself, with the exception of the purchase of the Am. Oleograph Co. stock. I spoke to my mother about this purchase some months after I had purchased it for the purpose of getting her consent to the same. I do not know how or when she actually ascertained that I had purchased it. I could not say when James knew it, as I — as to the time.

Q. Did you succeed in obtaining your mother's consent to make the purchase of the oleograph Co. stock? What did she say about it, if anything?

A. I did not so succeed. She stated that she would have nothing to do with it, and told me to have nothing to do with it in any way.

Re-examination by complainant:

Q. What became of the State St. property, title in McMicken?

A. I deeded my remaining interest in it, if any, to my mother in the summer of 1879.

Q. What became of the Jefferson property, title in McMicken?

A. I deeded it to Mr. Barker in the summer of 1879.

Q. How much and when did you draw the money from the estate for the purchase of the State St. property? Point to the entry in your account books.

A. I did not purchase it directly. I took it as payment for money loaned to William J. Tewkesbury and William F. Noble.

339 Q. Point to the entry on your books showing the time and amount drawn for purchase of Jefferson property from the estate.

A. I took that also for payment of a loan of $2,500 to E. S. Skinner.

Q. Point to the entry on your books showing the time and amount drawn from the estate of property of title in Sylvester Lind.

A. There are a great many items on the books, commencing May 7, 1873, which are charged to A. W. on account of these 80 acres and carried into Alex. White's account.

Q. Now, while these individual matters last referred to run through your books and accounts with the estate, tell us whether the $40,000 mortgages run through said books when you made the loan; if so, in what manner.

A. No, sir; the mortgages were made on my own account. They had nothing to do with my folks.

Q. Why did the purchase of these lands run through the books with said estate and not such mortgages?

Objected to as assuming that the purchases are entered upon the books.

A. They do not so run through the books.

Q. Explain, if you please, the entries of purchase-money before referred to.

A. It was necessary for me to account for the estate money that I used on my own account, and I took this way to do so. First I charged myself with it under the initials A. W., then I stated for what purpose the money was taken, then to whom paid, then the amount. I did this to account as well as I could do for the money that I used of the estate—to show just where it went to.

Q. Who has become the purchaser on foreclosure of these 80 acres and S. 20 acres?

A. I couldn't say positively.

Q. Give us your general idea.

A. I haven't any general idea about it. I was not here at the time.

Q. From whom did your mother, sisters, and brother learn as to your outside investments before spoken of?

A. I do not know that they ever knew about the 20 or 80 acre purchase. As to the quarry, they learned of it through Mr. McMicken or Mr. John Reid, I think, both of whom are my uncles. I do not think they ever knew of the various loans I made, with the exception, perhaps, of the one to my uncle and the American Oleograph Co. through my brother.

Q. Give us the names, dates, and securities, if any, on the several loans before spoken of as being total losses.

A.—

Loan account, R. Fowler, com. M'ch 18, '73 ---------- $1,864 25
Evidenced by note turned over to my mother as collateral security on my note to her.

Loan account, B. Lombard, com., M'ch 28, '73		6,720 00
Evidenced by a note; party became bankrupt, now deceased.		
Loan account, R. Reid, May 27, '73		2,223 00
2,000 of this is a claim *vs.* said Reid; remainder is evidenced by a note turned over to my mother.		
W. T. Noble, May 28, '73 bal. due		2,387 65
Evidenced by note; took State St. lot in payment therefor.		
E. S. Skinner, June 26, '73		2,500 00
Evidenced by note; took in settlement Jefferson lot.		
John Reid, July 17, 1875		2,037 94
Evidenced by notes and open account turned over to my mother.		
340 S. B. Munson, Jr., June 1, 1876		1,987 33
Balance of amount due me on various notes and accounts.		
All these dates are the commencement of these various accounts. Many of them continued through months and years.		
Total of the above loans		$19,920 17

I would state with reference to the Munson account that it is at least the amount as stated; it may be considerably more; other loans of small amounts, $1,317.22, evidenced by 8 notes, turned over to my mother; also claim on loans to American Oleograph Company, $2,989.57; it's at least this; may be more. All of the above are total losses to me and paid for by money taken from the estate.

Cross-examination:

Q. Did you obtain any money on the mortgages or other incumbrances placed upon the 80-acre tract or 20-acre tract amounting to $40,000, already spoken of?

A. No, sir; not a cent.

Q. What did you get in return for these incumbrances?

A. My uncle, John Reid, induced me to make these mortgages, by which, on the strength of which, he would receive capital stock in the Protection Life Insurance Co. which would pay large dividends, but to my surprise the company finally failed. The mortgages were foreclosed and I lost my property.

Q. What has become of the stock?

A. John Reid has or had, the last I heard, ½ of it and Sylvester Lind the other ½.

Q. What is it worth?

A. It is valueless.

Q. When were your accounts with your estate placed in the form of a book?

A. From Sept., 1878, to May, 1879.

Q. Did your mother, brother, or sisters have access to your books of account so that they might know what your private transactions were or what disposition you were making of the money belonging to the estate?

A. No, sir.

Q. Did you have entire control of the entire assets and money of your father's estate?

A. Yes, sir.

Re-examination by complainant's counsel:

Q. Are you a person of frugal and temperate habits?

A. Yes, sir; I think I am.

Q. You do not gamble, do you?

Objected to.

A. No, sir.

Q. You do not drink or smoke habitually, do you?

Objected to.

A. No, sir.

ALEXANDER WHITE.

341 SEPTEMBER 21, 1882.

Complainant, Frederick W. Cotzhauzen, then testified as follows:

FREDERICK W. COTZHAUSEN, the complainant, being first duly sworn, testified:

Q. State your name, age, and occupation.

A. I generally sign my name F. W. Cotzhauzen; I am forty-four years of age; I follow the profession of law; my residence and office is at Milwaukee, Wisconsin.

Q. Have you ever been engaged in any other business or occupation than the one named?

A. I have not. I have followed the profession of law now for upwards of twenty-five years. I attend to nothing but a strictly legitimate, litigated law business. My time is mostly spent in the courts. I have never touched anything outside of the legal profession unless as incidental to professional relations or for the purpose of investing or saving what little surplus there might be of a twenty-years' professional life.

Q. Did you ever own any stock or other interest in a lithographing business at Milwaukee known as the American Oleograph Company? If so, state your connection with said company and what your interest was in the same in the beginning of the year 1878.

Objected to by defendants' counsel.

A. I did own a stock interest in the said company at the time mentioned. The business was owned originally by some friends and relatives of mine to whom, during the crisis of 1873, I advanced $10,000 in cash for the purpose of helping them through their diffi-

culties, and in consequence thereof I carried a mortgage of $10,000 on my real estate for a number of years. In the course of time it became necessary to make further advances, as, owing to the continuance of the crisis, the business did not prosper, and about the year 1876 the creditors of the concern attached. I followed with my claim and bid in the property as junior creditor, and, having become proprietor, I reorganized the same on a stock basis, and by the 1st of January, 1878, I owned $20,000 fully paid-up stock out of $22,000 of capital stock issued. The company was then in a quasi-prosperous condition; it had an excellent reputation; its patronage extended all over the United States, large orders being received from New York and even the Georgia Cotton Mills, and the company had no debts beyond its purchases from day to day and $7,000 bills payable owing to myself. This stock and these bills payable represented my interest in the company at that time.

Q. Did you, about February 1st, 1878, dispose of your interest in said company? If so, state the facts at length.

Objected to.

A. I did dispose of the $20,000 of stock. I will state the facts at length as they occurred. On December 28th, 1877, I received a telegram, signed B. F. Guyton, as follows:

"What will you take for your lithographing concern, all cash? Can you meet me at Plankinton to-night—half past eight? Answer.

B. F. GUYTON,
97 *Washington St.*"

I did not know the party who sent the telegram, but met him at the Plankinton Hotel that night with Messrs. Thurber and Kurz, officers of the company, and the gentleman stated to us that he had come to buy the concern; that he had heard all in relation, knew of its reputation, and that a gentleman by the name of Kerting, at Chicago, had first called his attention to this business
"as being a very good one to acquire." He wanted to know
342 our figures, and from his statements left the impression that he was backed by a large amount of capital and ready means. I told him in substance that I had not thought of parting with my interest; that I had carried the concern through the crisis so long that I now expected to derive some benefit from my investment; that I was not in a position to sell out the business, and although I had a controlling interest I would not part with the same unless by the consent of my friends and co-officers of the company; also that I was not particularly in need of funds, desiring merely a fair investment at a fair rate of interest. I left him that night at the Plankinton to confer with Messrs. Kurz and Thurber, who were the practical men of the company and whose consent I assured him had first to be procured, while myself was not averse to parting with an interest in a business which I had to run and operate through third persons, while myself was obliged to give his undivided attention to his professional relations.

The next following day I received the following letter, viz:

"MILWAUKEE, *Dec. 29th*, 1877.

F. W. Cotzhausen, Esq.

MY DEAR SIR: I expect to leave Chicago this evening, 5.15, for New York, and will thank you to telegraph me to-day at my office before 2 o'clock p. m. the number of presses and the kind you now have in use; and also state, in case you have conferred with Mr. Kurz, whether or not my proposition is satisfactory, viz: To give you, say, from six to ten thousand dollars cash, the balance to stand at eight (8) per cent. interest, payable in either one or two years or both, as you may desire, secured on the stock as collateral, or I can put in as part payment some Chicago unimproved but desirable property, entirely clear, no incumbrance whatever; in fact, can make either way satisfactory to you, only if I give a note of one year want to have the privilege of paying it before the expiration of that time, in case I am 'overstocked with loose funds.' If my proposition is satisfactory I will telegraph you on Wednesday next from New York just exactly what I can do. My plan in regard to Mr. Kurz is to give him entire control of the working department upon a basis satisfactory to him, and he to be president if he so wishes it. My address, after Sunday, will be Glenham Hotel, New York.

Yours truly, B. F. GUYTON."

For some reason, which I could hardly explain, I was not struck favorably by this letter, and I answered it shortly, saying in response:

"Propositions generally acceptable; details too loose and unsatisfactory."

About January 8th I received another letter, which is as follows:

"OFFICE OF F. W. CROCKER, BANKER AND BROKER,
52 BROADWAY, N. Y., *Jan. 5th*, 1878.

F. Cotzhausen, Esq.

MY DEAR SIR: I am aware that it would be much better to negotiate matters in person, and had it not been for my coming here on other business we might have come to some understanding ere this. I would like your concern, and if I can buy it will want the entire force in Chicago if they will all go. I would not buy it, however, unless Mr. Kurz would be willing to go with us. I have a friend in Chicago who wishes to take an interest with me. He is a considerable real estate owner; owes not a dollar to any one on earth;
343 his property entirely free from incumbrance, and is also trustee of his father's estate, which is quite large and a great deal of it unimproved property, but all clear. If you would take part payment in some of his Chicago clear property he will go in with me and we can close at once. Alexander Mitchell is acquainted with this gentleman and can vouch for his respectability, and to that end this gentleman will probably call on you and negotiate for me in

the course of ten days. In the meantime if you are willing to entertain the proposition, viz., part real estate, perfect title and no incumbrance, at present valuation, you to have the valuation made by any one you designate. If you will please let us know on receipt of this we can arrange our finances on a definite basis.

I mention this because my friend wishes to join me if I can use some of his property. He never borrowed money and does not wish to; would rather sacrifice his property than borrow. I am negotiating here for a concern also, which we will operate in New York as well. We paid all cash for it. In case you do not wish real estate will you sell at the above favorable terms—say $5,000 cash and the balance on time, with the privilege of paying before the maturity of the notes—or what terms do you propose? I will be here about a week or ten days longer, and would like your views in writing.

Yours truly, B. F. GUYTON."

Address room 55, No. 52 Broadway, N. Y.

I think I received this letter while in the supreme court at Madison on professional business. I have no copy of my answer, but by endorsement on the letter I find that I answered it January 8th, and told Mr. Guyton that I wanted $27,000 cash or its equivalent. In point of fact I had become somewhat shy in consequence of these oscillating propositions and concluded not to sell at all, and consequently made this demand in order to break off.

All of the foregoing testimony is objected to by defendants' counsel, including letters and conversations regarding it.

Some time thereafter, in the course of the month of January, Alexander White called on me at the office in Milwaukee. It is now my impression, although I am not quite certain, that he called on me on two separate occasions; at first alone and afterwards with Mr. Guyton, but I am not, as I said, quite distinct in my mind whether he paid me one visit or two. I have, however, quite a distinct recollection as to the nature and subject-matter of our conversation.

He introduced himself as the Chicago friend of Mr. Guyton, to whom allusion had been made in the previous letter, and said in substance that he had come up to Milwaukee to inform himself more particularly as to the nature and value of the business and stock before he should interest himself with his friend any further. He stated to me in the course of this or the second conversation (I do not know which) that he was the eldest son of Mr. White, one of the earliest settlers at Chicago; that his father had died some years ago and left a very large estate; that he had been appointed administrator; that he had but one brother, three or four sisters, and a mother living; that none of them were married and they were all living together forming one family, and that he was managing the whole estate for their mutual benefit; that there was, amongst other things, belonging to the estate a building on Fifth avenue, which had been

vacant a great portion of the time and was then; that his attention had been called to this lithographing business by Mr. Guyton, and I think he also mentioned Mr. Kerting's name; that the family
344 was desirous of obtaining good tenants for the building and had consented to put in the necessary steam, if the business should be moved down to Chicago, into the building on Fifth avenue; that he or they (I do not now recollect which) would take an interest in the business; that he himself, Alexander, had too many business relations crowding in upon him all the time, but that it was desired that his brother James should work himself into and take charge of the business, and that if satisfactory arrangements could be made James would come to Milwaukee and learn the trade. In the course of this conversation he also stated at some detail that the family estate was a very large estate; that they had a great deal of property in the outskirts of Chicago—valuable, but yielding very little revenue; that if I would take a part of this real estate (I think he mentioned some cottage property) the whole purchase would be readily closed up at once, but if not that the purchase would have to be made on a credit from one to three years, and not, as Guyton proposed, on shorter time. He also stated that, while the family had not a large amount of cash means, it had been a maxim of his father and the family never to loan or mortgage, but rather sacrifice and sell, and he while in the management of the estate had constantly acted under the same practice. In the course of said conversation I showed him the letter of January 5th, 1878, which I had received from Mr. Guyton, and we read the same together, or most of it, and discussed the various features therein referred to, and amongst others read the purchase of a similar concern in New York and their paying all cash for it. Mr. White readily assented to these various matters; at least I do not recollect that my mind at the time became disturbed by anything that he said so as to distract from the statements made by Mr. Guyton in his letter, but persistently offered unincumbered real estate of the family at a valuation to be agreed upon by appraisal, to be mutually agreed upon, in payment of the stock interest, which I declined, for the reason that I did not desire real estate at a distance, and still less when unimproved, but preferred to have my money invested safely and at a fair rate of interest, while there was no necessity for large cash payments.

Mr. White at the time of this first visit, I think, also obtained a letter of introduction from me to the secretary, and I afterwards understood from him that he had taken occasion to look into all the matters and details, and finally we settled substantially on the terms of purchase, which were that I should be paid $8,000 in cash and the balance of $12,000 in joint notes, one, two, and three years, at eight per cent., $20,000 worth of stock to be left as collateral security to the notes. In the course of this and subsequent conversations Mr. White requested that he should not be known in the matter as a purchaser, and that his name should not be mentioned by me as interested therein to any one.

I think it was during these conversations or immediately afterwards that I received the following memorandum of references, which I now produce:

Alexander White, Chicago. Refers to Hon. Elliott Anthony, Edwin Walker, att'ys, Ashland block; Joseph N. Barker, Barker & Buell, att'ys; Charles L. Rice, machinery supplies; Monroe Heath, of Heath and Milligan, mayor of Chicago; Joseph O. Rutter, pres't Traders' National Bank.

I did make enquiries and ascertained substantially that Alexander White was the eldest of the family and in the management of their joint estate, having a child's interest therein; that the family were all living together, moving in very good society, and general information of that kind, which impressed me that the statements made by Alexander White and Mr. Guyton were substantially correct, and I concluded that under such circumstances there was no objection to closing the sale.

On February 6th, 1878, I received the following telegram:

"Missed the train this morning. Can I see you at Plankinton or elsewhere this evening on arrival of train? Papers all ready.

B. F. GUYTON."

It is my decided impression at this time that towards the end of January Mr. White and Mr. Guyton both called at my office, and that it was agreed upon that the sale should be concluded under date of February 1st; that the notes should be executed as of that date under the name of B. F. Guyton and payable to Alexander White or order, and that in the course of that conversation Mr. Guyton and Mr. White insisted upon making the first note somewhat smaller, as they needed more capital than they had at first supposed, in view of their New York purchase and the vigorous prosecution of the business, and an effort was also made to prevail upon me to waive collateral security of stock to notes, to which proposition I assented, on condition that there be some further or other security put up in lieu of stock.

On February 7th I received the following letter:

"Office of B. F. Guyton, 97 Washington St.

CHICAGO, *Feb. 7th*, 1878.

F. W. Cotzhausen, Esq.

MY DEAR SIR: I think I can give you a number of gilt-edge endorsers in a day or two, and prefer that to the plan suggested, as I would like to have all the business concentrated in one place, and, besides, do not want to be cramped on account of that extra $3,000; in fact, don't want to try to do anything unless I can carry it out; prefer having it all clear and without liens, and to that end hope to accomplish the object first desired by you, viz., another good endorser; hope by Saturday or Monday we can close it, and that without my going to New York; in other words, I wish, instead of paying you $8,000 cash and making a lien on the property, — pay you

$5,000 and secure the deferred payments beyond a doubt. I hope to arrange to take them all up within a year.

Yours truly, B. F. GUYTON."

I have no copy of my answer to said letter.

On February 8th I received the following letter:

"Office of B. F. Guyton, 97 Washington St.

CHICAGO, *Feb. 8th*, 1878.

F. W. Cotzhausen, Esq.

DEAR SIR: As I wrote yesterday, prefer having the matter all clear and without lien, and can further say to you that I 346 can give you the names of two parties here who are actively engaged in the mercantile business who will also endorse my paper—C. L. Rice, of C. L. Rice & Co., who can refer to Mr. D. L. Wells and Mr. Merrill, of the St. Paul road; the other, S. B. Munson, Jr., sheet iron and corrugated iron dealer, who can refer to the Nazros and Clarence Shephard, of Milwaukee.

If you will please let me know by mail or telegram which of the names will be acceptable we will have the endorsement made accordingly. Would you have any objection to my dating the notes February 15th instead of 1st? I merely ask the question; you know it makes a difference to me in interest.

Yours truly, B. F. GUYTON."

"P. S.—The situation is now to give you either of these gentlemen as endorsers for $15,000, and I have the property without any lien to remove when convenient."

I answered this letter Feb. 9th, 1878, as follows:

"B. F. Guyton, Esq.

DEAR SIR: Yours of yesterday received. Please do not constantly compel me to answer letters and telegrams, as it is a great drawback in my professional relations. You know what I need and what I want; it is one or two endorsers in addition to Mr. White, so as to make the notes good beyond a doubt. When they are ready for delivery I am going to pass upon sufficiency and not lose time now. If Messrs. Munson and Rice are as you represent them there will be no trouble at all. As to changing of notes to February 15th, I cannot consent; it is your misfortune that things drag. If difference in the interest should become material we can readily adjust the same by endorsements or otherwise. As the state of our business, work in progress, and amount of outstandings are constantly fluctuating, we must await the day of closing our trade before finally determining the equity of dropping the interest from February 1st.

Yours truly, F. W. COTZHAUSEN."

I think a few days thereafter Mr. White and Mr. Guyton came up and brought me the notes—there were three notes—all dated Feb.

1st, 1878, executed by B. F. Guyton to the order of Alexander White, and on the back of the same Alexander White's name at the top, and below the name of Alexander White and of S. B. Munson, Jr. The notes were for $3,000 one year after date, $6,000 two years after date, and $6,000 three years after date. There were separate interest notes extending over a period of three years, with interest at 8 per cent. on the $15,000 balance, executed and endorsed in the same way. I am very positive that Alexander White was present when these notes were delivered at my office, as I did not understand the nature of the double endorsement on the back, his name appearing twice, and I enquired particularly as to the reason and the law of Illinois, and was told by him that the first endorsement was for transferring the title to me, and, as to the second, the intervening blank might be filled up at any time with a guarantee, using one of the stamps, if desired, kept by Chicago banks for that purpose. On February 13th, 1878, the bargain was definitely concluded, subject to the ratification of my friends, the officers of the company. I then wrote a letter, under date of February 13th, 1878, to the secretary, marked "Plaintiff's Ex. No. 17," and within a day or two thereafter the whole matter was closed up. A meeting of the stock-
347 holders and directors was convened, the transfer of stock was ratified, Mr. Guyton was put into the board in my place as vice-president, and the company, by resolution of the board, became a subsequent endorser and guarantor, the purchaser having acquired a controlling interest therein. It was agreed that the outstandings of the company, at the time amounting to nearly $12,000, should stand as collateral security to bills payable, then held by me, as well as a valuable stock of chromos on hand, among which — a very large picture called the "Eibsee," of which only 1,000 copies had been printed; the outstandings, as fast as collected, in reduction of said indebtedness, to be deposited at the bank in Milwaukee in the name of F. W. Cotzhausen, and to be applied in the reduction of said bills payable monthly; all accounts uncollected by the company within three months to be turned over to Cotzhausen, Smith, Sylvester, and Scheiber for collection.

Instead of cash I had been handed a draft on New York for $5,000, drawn by B. F. Guyton on F. W. Crocker, I think, of New York, which draft I accepted in good faith in lieu of cash. I put the draft into the bank for collection, but after a few days received notice of protest. A long correspondence sprung up and a number of interviews were had after such protest between Mr. Guyton and myself. He explained to me that the protest was owing to a misunderstanding; that the funds in New York belonged to him, but were placed in the bank in the name of Alexander White, in consequence of which the draft was not accepted. The matter not being arranged, within the next few days I wrote Alexander White asking an explanation, and received from him the following letter in reply:

"PALMER HOUSE, CHICAGO, *Feb. 23rd*, 1878.

"DEAR SIR: Yours of 21st inst. received this day, and in reply would say that, expecting to be in New York about the time Mr.

Guyton would close his Milwaukee matter, he desired me to have certain funds placed to my credit in New York (where I keep an account) so as to draw on me. Mr. Crocker, his broker, as I now understand it, placed some $6,000 to my credit for Mr. Guyton, and not going East, as I expected, Mr. C. would not honor Mr. G.'s draft, tho' he telegraphed me that Mr. G.'s draft was good to that amount. Soon after Mr. C. telegraphed that my order was necessary, so I at once ordered a retransfer of said amount to Mr. Guyton's credit. I only wonder it has not been settled some time ago. I am quite confident that Mr. Guyton has acted in entire good faith in this matter and that the delay (for it is only a delay) is the entire fault of his New York broker.

"Yours truly, ALEXANDER WHITE."

This letter of Alexander White set me at rest for a while and I again patiently waited. Mr. Guyton, all this February and March, sent me letters from the office in Milwaukee, Chicago, and later on from New York, assigning reasons for not meeting the first draft and making promises, none of which became realized and no money was received. Business, in the meantime, suffered largely; pay days were not kept; bills of the company for purchases were not paid. Alexander White sent his brother to Milwaukee, but himself I did not see. Having sold my stock interest, I had no further standing in the company. I delayed until about July, 1878, when I finally became convinced that the company was collecting the outstandings and not applying them to the reduction of bills payable as agreed, and that its patronage and custom was fast diminishing. I
348 then commenced an attachment suit against B. F. Guyton on account of the $5,000 protested draft, and attached the stock interest standing in the books of the company in the name of B. F. Guyton, although I had in the meantime been informed that Alexander White had received an assignment from B. F. Guyton of three-fourths of the stock so transferred. This attachment brought Alexander White to Milwaukee. He complained bitterly of the unreliability and treachery of B. F. Guyton, and offered to negotiate in settlement of said suit. I told him that none of the promises made to me by Mr. Guyton had ever been performed, although I had been accommodating and indulgent, and that I wanted to have nothing more to do with Mr. Guyton, and proposed thereafter to deal with Alexander White directly. For details of settlement I referred him to Mr. Sylvester, one of my partners in the law business, my own attention being constantly engaged in business for clients. The matter was finally arranged between Mr. White and Mr. Sylvester, and I received a small amount in cash during July, 1878, and gave time on the balance of the first cash payment, subdividing the $4,000 thereof so as to make it more convenient to Mr. White. Between then and the 1st of December next Mr. White made good the first draft of $5,000, and, I think, the first three interest notes of $300 each, less a discount from the date of the notes to the time of delivery. A portion of the payments so made, as I was subsequently informed, came out of the business (the oleograph

company), the balance from the White estate. I have never received any other offer of payment that I can recall to my mind on account of said stock purchase, the whole of the $15,000 and its accumulating interest remaining unpaid.

There came to my hands on account of bills payable from the company, the proceeds of collections deposited in the bank, about $3,200, and a somewhat larger amount remaining still due on bills payable from the company to me. Some time in the summer of 1878, when the settlement with Alexander White was made, the company had collected and appropriated, for want of other means, a great portion of said collections, which ought to have gone to me. One of the bills payable had matured about July 1st, 1878, and, at Alexander White's request, I extended the payment, I think, to December 1st following, on condition that he endorsed and guaranteed in writing the balance of bills payable, which was accordingly done by him.

I believe the foregoing to be as concise a statement of the facts as I can give.

Defendants' counsel objects to the conversations with Mr. Guyton and to the letters and telegrams which were offered in evidence.

Q. What became of the business after this?

Objected to.

A. After said settlement with Alexander White I did not pay much or any attention to the concern. I saw James around there occasionally, and also repeatedly met Alexander White when paying a call, but not particularly enquiring into the details of their affairs. I think I saw James there in July and August, and understood he was employed in the office. Some time in August I was asked by Alexander White whether there would be any objection to moving the shop to Chicago, into the building of the family. He stated, in substance, that as soon as the business was located down there he would find no difficulty with the banks and others to obtain all the necessary cash means to restore the business to its former standard and to relieve it from financial embarrassments. His brother was assigned to a place in the office, and with his assistance and Mr. Thurber, the secretary, whom he had found to be a very reliable person,
he thought they would be able to get along nicely, much
349 better than with Mr. Guyton, and general remarks of this
kind. I told him subsequently that we had kept an office in former years at Chicago, and I thought myself that it would help the business materially if it were located at Chicago, and if the company moved its shop there they had to keep their general office in Wisconsin; and I was told such would be done, and the office was accordingly located on Wisconsin street, while the shop and machinery were moved down to Chicago, I think, in September, 1878, under the personal supervision of James B. White. Some time in October or November, 1878, I dropped into the shop of the company, at 83–87 5th avenue, and found that the same had been very handsomely fitted up and arranged, although not quite finished;

steam had been put in, an elevator and new presses. In the course of my visit I met Mr. Alexander White, having previously interchanged some words with Mr. Secretary — and Mr. James B. White. After exchanging the usual compliments on meeting, and being asked by Mr. White as to the state of my health, I told him I was in a pretty fair condition, but very much tired out by the pressure of professional relations, and he said to me in response, in substance, that he was troubled more or less the same way; that he had been figuring and accounting for a number of weeks until his head was dizzy; that one of his uncles had been there (I think from the East he said); he was the guardian of some of the children, or words to that effect. I have a distinct recollection of such a conversation, in substance, but cannot, altho' I have tried, call to my mind the precise words which he used as to the presence of his uncle or his part in such accounting. On reflection I think this conversation was in October, 1878, and not in November, as the carpenter and others had not quite finished putting up shelving for the stones, but were at work, and it was my first visit in Chicago after the shop was moved.

Q. What next transpired between you and Mr. White or the company?

Objected to.

A. Towards the end of November, 1878, I received a letter from the secretary of the company, informing me in substance that it would be very difficult for the company, in view of the expenses which it had been put to, to meet its bills payable, meaning the note of July 1st, 1878, payment of which I had extended to December 1st, 1878, and asking a further extension. I answered said letter as follows:

"Nov. 26th, 1878.

E. C. Thurber, Esq., secretary.

Dear Sir: I suppose you refer to the note of July, 1878, which you agreed to take up December 1st. I do not like to extend payment any further; still, if absolutely necessary, I am willing and ready to help my friends, feeling all the time that I am safe. On January 1st another note matures, the last one I hold against your company. What do you propose to do about it; within what time can you reasonably respond? Send me a statement of present assets and liabilities up to December 1st, a check for the interest, and fix a reasonable time for cancelling the whole debt. If I can agree to your terms I will accept of new notes, with endorsement, as proposed. Please answer at once.

Yours truly, F. W. COTZHAUSEN."

I received no answer to this—no remittance—on December 1st, except on Mr. White's personal account, being the last installment of the $5,000 cash payment, which was sent to Mr. Sylvester in satisfaction of attachment suit; neither did I receive any statement of

assets and liabilities, until December 27th, 1878, after Mr.
350 Munson had gone in as treasurer, when the company sent me a statement of assets and liabilities and requested again an extension on bills payable, in easy payments, on new notes. The statement transmitted to me, December 27th, 1878, is as follows:

Assets:		
Book accounts	$8,737 30	
Machinery, tools, &c.	8,776 26	
Stones	11,947 01	
Chromos	5,262 22	
Patterns	405 00	
Paper	1,700 00	
Colors	500 00	
Total		$37,327 79
Liabilities:		
Book accounts	$1,192 69	
Bills payable	2,718 39	
Bills payable to F. W. Cotzhausen	3,591 35	
Total		$7,502 43
Surplus		$29,825 36

I did at the time believe said statement to be true, and sent the following letter in response:

"DECEMBER 28TH, 1878.

E. C. Thurber, Esq., secretary and gen'l manager.

DEAR SIR: Your favor of the 27th inst. received. I regret very much the delay to answer my letter written towards the end of November. I received no remittance on December 1st, as promised, and no explanation, all of which, I suppose, is accounted for by your indisposition. Statement of the company received. It is very flattering, indeed, showing handsome progress, still I can readily see why ready means wherewith to pay are short. Entitled as you are to my assistance, I feel inclined to accede to your wishes as far as I can. The note due January 1st for $2,500 and interest I have discounted. I owe thereon $1,500 and cannot recall or take it up without making good that amount. If you will send me by the 1st or before the 2nd $1,500 on account I will take up the note and extend the balance to suit reasonable convenience, allowing you from three to twelve months on the balance owing.

Should be much pleased to see you at my house when your relations call you to Milwaukee.

Yours truly, F. W. COTZHAUSEN."

In response I received on January 2nd no money, but a letter informing me that the note of January 1st could not be met, and requesting me to protect it against protest, to which I answered:

"JAN. 2ND, 1879.

E. C. Thurber, Esq., secretary.

DEAR SIR: I received yours this morning. I need hardly say that I am very much annoyed, but as for the protest I have so often consented to extend, that I really think now you are trying an advantage upon me. I am surprised at your neglect to meet the demands with greater promptness. I know of no way to prevail upon the bank to waive protest without meeting the payment, and I am in no shape (the December payment having gone over)
351 to relieve you; it requires the cash by to-morrow or the best of acceptances.

Yours truly, F. W. COTZHAUSEN."

To state the matter shortly, I did not at this or any subsequent time, although constantly urging payment, receive anything from either the company, on bills payable, or Mr. White and associates on account of stock purchase. The first note given for stock amounting to $3,000, together with the fourth one-quarter interest note, matured February 1st, and became protested. Mr. White had absented himself from Chicago some time in December, 1878, and to all my inquiries I invariably met with the response that he was East, but would soon return, when matters would be straightened. Such was the statement of Mr. Thurber, James B. White, and S. B. Munson, Jr., all of whom I approached from time to time during January and February in relation thereto. About the middle of February, however, I became uneasy and directed Messrs. Tenney and Flower, our correspondents at Chicago, to commence an attachment suit against Alexander White, S. B. Munson, Jr., and the American Oleograph Company, joining in said suit the note of $3,000 given on the stock purchase and the balance of bills payable given by the company and guaranteed by Alexander White, as I stated. The attachment was levied, but, in order not to harm the business and good will of the concern, a custodian was placed in the office and shop, who stayed there at my expense several months. On investigation then made I came to the conclusion that the financial statement of December 27th, 1878, was a fraud and imposition; that the company had suffered for want of means almost from the very same day that I transferred my stock, and that the means arising on collection of outstandings, and which were to be applied on bills payable to my account, had been applied by either Mr. Guyton or Mr. White, and still less additional capital for operating had been invested by them; yea, that the assets and credit of the company had been resorted to and used time and again for private purposes by Mr. Guyton and Mr. White all through the year 1878, and even for the purpose of making good to me in part the first $5,000 payment on account of stock, and I now hold in my possession a number of letters and telegrams written by Mr. White and Mr. Guyton to the

company, and extending over a period of time from March to the winter of 1878, which show the financial relations of both of these parties to have been rotten all through, constant efforts being made to close one hole by opening another, which letters I am ready to produce if called for. I also found that the good will and patronage of the business was rapidly diminishing, the company proving careless and unreliable in the execution of orders, and still I was promised by those in charge that as soon as Mr. White returned matters would be arranged and settled up, but that in the absence of him, the representative of the White family, nothing could be done. My disposition towards the company is best shown by some letters which I sent to my attorneys at Chicago about this time and which I now offer.

Objected to.

"MARCH 23RD, 1879.

Messrs. Tenney and Flower, Chicago.

GENTS: I am somewhat in doubt whether White and Munson could raise the money if they had the disposition. I now suspect all of them to be more or less "kiting," and if unable to raise the money closing the concern would not have the desired effect. One-
half the value of the business is in its good will and the work
352 on the stones. It would not help us, but destroy the business at once beyond recovery and to lose one of our endorsers on future paper. If necessary to use more legal persuasion, removal of stones, with work thereupon, would be an effectual measure, and if continued to any extent would bring business to a standstill. Stones are a marketable article at a certain price per pound. I do not like the idea of breaking up the business; still, if the deficiency is owing to an ugly disposition and not mere inability, we must turn the screws tighter, which can be best accomplished by commencing the removal of stones and machinery, storing them, so as to avoid a custodian.

I am inclined to think that Mr. Thurber, the secretary, together with Mr. Kurz, the president, would execute a chattel mortgage rather than see the business interrupted, as the present patronage is still very considerable. I wish you would call on them and explain, in a friendly manner, first, that something must be done; second, that the president and secretary can act without waiting for Mr. White and Mr. Munson. I have reason to believe Mr. Thurber and Mr. Kurz would rather see me come in again than to remain connected with present associates. Please keep me advised.

Yours truly, F. W. COTZHAUSEN."

"MARCH 27TH, 1879.

Messrs. Tenney and Flower, Chicago.

GENTS: Obliged to you for the kind information as to matters. A chattel mortgage will be good, although no express resolution is shown to authorize its execution on the part of the president and secretary. The necessities in this case to relieve the property from destruction will be sufficient warrant. Get a few orders or accept-

ances applied on account of company notes, with the balance secured on presses and stones which belong to the company. I understand the Hoe press was at one time individual property. Then have the attachment suit discontinued and the other suit got ready for a fight. If the company deals fairly by me in meeting or securing its own paper I shall stand by its officers, and you are authorized to act in my behalf. I cannot now write any further. I am called into court.

Yours truly, F. W. COTZHAUSEN."

A short time thereafter it was brought home to me that my attorneys had committed some mistake in their attachment proceedings, the precise nature whereof I do not understand. Owing to this fact, however, and having become convinced that the company was unable to raise the money, and that Alexander White persisted in staying away, so that even the service of summons could not be made upon him, although every reasonable effort was made to do so, we discontinued, in April, 1879, the attachment levy. I paid the expenses—several hundred dollars. The custodian was withdrawn, but the case still remained pending in court, still awaiting service of process upon Alexander White, one of the defendants therein. During all this time, in January, February, March, and April, I was repeatedly down at Chicago, and talked with the officers of the company and James B. White in relation to the pending suit and my financial claims, and I am prepared to say that James B. White knew all about them. The matter dragged along until some time in August, 1879, when I was informed that Alexander White had conveyed all his
353 property to his relatives, mother, brother, and sisters; that a chattel mortgage had been given to the Cleveland Paper Company for $10,000, covering all the tangible property of the company, and that an application was being made for a new charter by Thurber, Munson, and others. I immediately directed my attorneys at Chicago to levy an *alias* attachment in the pending suit, which was accordingly done, and after a month's delay the attachment suit was settled and compromised; the company executed to George Sylvester, the trustee, a second chattel mortgage on its property as collateral security to the amount then past due and owing on the stock purchase and bills payable, amounting to about $7,800; this mortgage was made to George Sylvester, trustee, because some of the notes had been discounted with the First National Bank of Milwaukee by him and some I then held, so that Mr. Sylvester acted as trustee for myself and said bank.

Complainant's counsel now offers in evidence two certain judgment notes, dated Chicago, July 17th, 1879, for $5,000 each, with eight per cent. interest after date, signed by the American Oleograph Company, Alexander, and S. B. Munson, Jr., payable to the order of Cleveland Paper Company, and also the accompanying chattel mortgage given by the American Oleograph Company to the Cleveland Paper Company, dated July 17th, 1879, in the usual and ordinary form, with warranty of title, covering all tangible property of the

company specifically described and filed for record in the recorder's office for Cook county on the 24th day of July, 1879, recorded in Book 888 of Records, on page 327.

Objected to.

I might state, in conclusion, that after the execution of this second mortgage we received a few hundred dollars on account, but towards the fall of 1879 the company proved hopelessly insolvent and was succeeded about November, 1879, by what was known as the Chicago Lithographing Company.

Defendants' counsel objects to all the foregoing testimony as being hearsay evidence and as immaterial testimony in this cause.

Cross-examination:

Q. Were the presses, lithographing stones, and most of the other property of the American Oleograph Company transferred to the Chicago Lithographing Company, and does that company now hold the same, together with a valuable printing press purchased by the oleograph company after its removal to Chicago?

A. That is a very complicated question. The present company known by the name of the Chicago Lithographing and Engraving Company is not the Chicago Lithographing Company to which allusion was made by me in my direct examination. The present company was organized in September, 1880, by myself, it having become necessary for me in the course of time to take up and assume the first mortgage of the Cleveland Paper Company and to foreclose the same, together with the second, and on such foreclosure I became the fortunate possessor of the debris, if I may use that term, of what at one time was called the American Oleograph Company. When I say "debris" I mean to be understood what little of stock, machinery, and stones remained; it included not all, but the majority of the machinery and stones at one time owned by the oleograph company and an additional press, which has since been claimed and replevined by Mr. Potter, of New York. All of said property is still on hand, in a more or less depreciated condition, but no outstandings, no patronage, no good will, and no one to manage and operate.

354 Q. At the time of the purchase of the Cleveland Paper Company's mortgage what was the amount due on that mortgage?

A. It was liquidated at $6,800.

Q. Was that the price paid by you?

A. I drew my check to the Cleveland Paper Company for $6,500 and assumed the payment and settlement of the expenses incidental to an attempted foreclosure thereof; the exact amount I can figure, but I cannot tell from recollection. A discount of $300 was given to cover such incidental expenses.

Q. What is the amount of stock of the Chicago Lithographing and Engraving Company, and who owns the same?

Objected to by the complainant as irrelevant.

A. The amount of stock subscribed is $20,000; it is owned by myself, Chas. Edwards, of Chicago (a cousin of Robert Lincoln), and George Sylvester, of Milwaukee, one of my law partners.

Q. State how much by each.

A. F. W. Cotzhausen, $13,000; Charles Edwards, $4,500; George Sylvester, $2,500. It may be proper here to say that $500 of Mr. Cotzhausen's stock has been withdrawn by the company and assumed by it at $300.

Q. As a matter of fact you sold and transferred your interest in the American Oleograph Company to B. F. Guyton, did you not?

A. The transfer was nominally made to B. F. Guyton; in point of fact the trade was between myself of the one part and Alexander White and B. F. Guyton of the other part.

Q. B. F. Guyton executed as principal all notes which were given on that purchase, together with a draft for $5,000 on New York, did he not?

A. The notes were executed as I have stated, and also the draft drawn by Mr. Guyton on Mr. Crocker, of New York; they speak for themselves; the circumstances under which they were given I have explained.

Q. That draft was finally paid in full by Alexander White, was it not?

A. The draft was settled for by Alexander White, as I have stated at length, between July and December 1st, 1878.

The foregoing was all the testimony given by said witness.

F. W. COTZHAUSEN.

Complainant then introduced George Sylvester as a witness, who testified as follows:

GEORGE SYLVESTER, being duly sworn, testifies as follows:

Q. State your name, age, residence, and occupation.

A. My name is George Sylvester; I am 34 years old; I reside in Milwaukee; I am a lawyer; I am a member of the law firm of Cotzhausen, Sylvester and Scheiber.

Q. Do you know Alexander White and B. F. Guyton?

A. I do.

Q. Do you recollect the time that a certain draft given by Mr. Guyton to F. W. Cotzhausen on a broker in New York came back protested?

A. I do.

Q. Was that draft afterwards put into your hands for collection?

A. It was; the firm commenced a suit upon it for Mr. Cotzhausen.

Q. State the circumstances shortly, and what was done in relation to it.

A. On the 5th day of July, 1878, we commenced a suit on that draft in the circuit court of Milwaukee county in favor of F. W. Cotzhausen against B. F. Guyton. In that suit we attached
355 the stock interest of the defendant in the American Oleograph Company. In that suit, at the instance of Alexander White or at his solicitation, I gave him (after consultation with Mr.

Cotzhausen) a stipulation or agreement on the 25th day of July, 1878, of which I have a press copy. It is as follows:

"Circuit Court, Milwaukee County.

F. W. COTZHAUSEN *vs.* B. F. GUYTON.

It is hereby stipulated and agreed on the part of the plaintiff in the above cause that all further proceedings in said suit, including further proceedings under the writ of attachment issued therein, be, and the same are hereby, stayed until December 5th, 1878, said suit and proceedings therein then to be discontinued on payment of costs thereon incurred: And provided further, That four certain promissory notes for $1,000 each, dated August 1st, 1878, payable on August 15th, 1878; Sept. 1st, 1878; Sept. 15th, 1878, and December 1st, 1878, executed by one Alexander White and guaranteed by S. B. Munson, Jr., are paid by said December 5th, 1878.

Dated July 25th, 1878.

COTZHAUSEN, SMITH,
SYLVESTER & SCHEIBER,
Plaintiff's Attorneys."

Q. Did Mr. White or any one else in his behalf in the course of that summer and fall pay and discharge the notes so given in settlement?

A. Yes, sir; Mr. White gave me those notes for you (Mr. C.), and as they came due he paid the notes to me and I turned over the money paid to you, Mr. Cotzhausen.

Q. Where did the money come from which he so paid? State if you know.

A. I don't know. The money came from Alexander White; it was remitted, I think all of it, by his check on some bank in Chicago—I don't — the name of the bank—signed by him as administrator; Alexander White, administrator.

Q. Did not some of the money come from the company?

A. I think not. My impression is that the money was sent by check, as I have intimated. The company might have paid the costs of the suit.

Q. Do you know James B. White?

A. Yes, sir.

Q. Did you ever see him at Milwaukee?

A. Yes, sir; I have seen him here several times. I was not at that time personally acquainted with him, but he was pointed out to me as James B. White. It was during the summer and fall of 1878, I think.

Q. Did you have any conversation with him at or about that time?

A. No, sir.

Q. Have you in your possession any written instructions from Mr. Cotzhausen as to the basis on which the settlement with Alexander White was made?

A. I have.

Q. Produce the same.

A. The same is as follows:

"RURAL HOME, *July 13th*, 1878.

George Sylvester, Esq.

MY DEAR SIR: I shall entertain no proposition for a
356 compromise with Mr. Guyton. He has abused my confidence and delayed me by promises until he had actually drawn out what he had put in. As to Mr. White, I regret the position in which he finds himself. If it had not been for his pressing letter of early March this thing would not have occurred. I should have gone for Mr. Guyton at once. As things stand, I want my $5,000 and interest in cash or I shall sell Guyton out in a few weeks, whoever may be the purchaser. If it is an accommodation to the oleograph company if I give grace on collection of outstandings I will do so, provided my first installment of $5,000 is paid, but I shall not consent to take money out of the business to pay for the first purchase or the company's notes for the benefit of individual stockholders. These remarks pretty fully express my feelings, and there is no use to call on me for further negotiations or different terms; nothing short of $5,000 cash will do. Inform Guyton that he may save money by giving you a notice of appearance. Lose no time in pushing things.

Yours truly, F. W. COTZHAUSEN."

Copies of letters objected to as improper.

Q. Were those instructions carried out by you as fully as practicable?

A. They were.

Q. What became of the attachment suit?

A. Proceedings were stayed on that for the present until September 24th, 1878, when, at the request of Mr. White, who wanted to move the business to Chicago and wanted the attachment released, I gave him a notice of discontinuance, a copy of which I have here and will read.

Objected to.

"Circuit Court, Milwaukee County.

F. W. COTZHAUSEN *vs.* ALEXANDER WHITE *et al.*

To the above-named defendants and whom it may concern:

Take notice that the above-entitled action is hereby discontinued and the attachment thereon issued and levied hereby released.

Dated Sept. 24th, 1878.

COTZHAUSEN, SMITH,
SYLVESTER, & SCHEIBER,
Plaintiff's Attorneys."

All of the foregoing questions are objected to as immaterial.

Cross-examination:

Q. Were all the notes executed by Alexander White, of which you have any knowledge, signed by him in his individual name?

A. I don't remember as to that how they were signed.

Q. You say the checks were signed Alexander White, administrator?

A. Yes, sir.

Q. You cannot say that the notes given by him in the settlement made by you were executed by him in the name of Alexander White, administrator?

A. I cannot say positively. I don't remember how the notes were signed, but I do remember how the checks were signed; it struck me at the time—a circumstance that I could remember.

The foregoing was all the testimony given by said witness.

GEORGE SYLVESTER.

357 SEPTEMBER 7, 1882.

Complainant then introduced E. C. Thurber, a witness, who testified as follows:

E. C. THURBER, being duly sworn, testifies as follows, viz:

I was the sec'y of the American Oleograph Co. until Dec., 1879. I was secretary and superintendent at the time when Guyton bought Mr. Cotzhausen's stock, and the Co. had its shop and office located at Milwaukee, Wis. I am in the employ of the Chicago Lithographing and Engraving Co. at present. Mr. Cotzhausen is president; Chas. Edwards, treasurer. I first made the acquaintance of Alex. White about Jan'y or Feb'y, '78. Mr. Cotzhausen then was a director of the American Oleograph Co. and owner of $20,000 full-paid stock out of $22,000 issued by the Co. This stock was sold to B. F. Guyton. Mr. Cotzhausen is a lawyer by profession; never took no active part in the company's affairs or business, except by keeping its finances straight and seeing to it that it never owed anything unless to himself. The Co. was doing fair, prosperous business. Guyton came to Milwaukee and wanted to buy out Cotzhausen's controlling interest. He first proposed to pay cash; afterwards bought Cotzhausen's whole stock, partly cash basis, balance 1, 2, 3 years, for which he received Guyton's notes, $15,000, dated Feb'y 1, 1878, and interest notes, besides draft on New York, $5,000. The letters now produced by me show details of such purchase.

Letters now offered in evidence, marked Complainant's Exhibit 17. Objected to by defendants' counsel.

The draft given to Cotzhausen of first installment, $5,000, on New York came back protested. The transfer of the stocks to Guyton had been made on the books and Guyton was made vice-president. He entered the business and assumed, virtually, main charge of its affairs.

Q. When did you first make the acquaintance of Alex. White?

A. About Jan'y or Feb'y, 1878, in Milwaukee. Mr. White was introduced to me by Mr. Guyton. This was before the transfer of stock. Mr. White came to Milwaukee to look at the lithographing

business, have an inventory taken of stock, etc., before he would give his consent to the purchase, as I understood it, by Mr. Guyton. The inventory was taken afterwards by Guyton and myself and forwarded to Mr. White, at Chicago. Mr. White was introduced as the capitalist who would furnish the money for the purchase of the business.

Q. What did he say as to the business himself and their intentions for the future?

Objected to.

A. Mr. White said that he was satisfied with the showing of the business and the inventory, which led to the transfer. For the future of the business it would be removed to Chicago and enlarged. Mr. White was to be the backing of the institution. He guaranteed to furnish ample capital for conducting the business and paying the debts—outstanding debts.

Q. Did you and Kurz consent to such transfer of stock?

Objected to.

A. We did.

Q. What was the effect upon the business when the change was made and the New York draft came back?

A. The effect was bad. We had no capital to run our business, or very little, aside from the earnings of the Co. Our credit was ruined. Cotzhausen in June attached Guyton's stock interest in the concern—in June, 1878—for his first installment of $5,000.

Q. What then?

358 A. That the attachment was arranged by Mr. White and Mr. Cotzhausen for the first payment of $5,000.

Q. Look at these two letters and see whether they truly represent the state of affairs at about that time.

Objected to as leading.

Letters offered in evidence, marked Complainant's Exhibits 18 and 19.

Objected to.

Q. What part did Alex. White play in the business of the Co. after he had settled the attachment for first installment of stock?

Objected to.

A. I considered Mr. White the principal man—the financial man. I looked upon him as the manager of the business. He was partly in Milwaukee, partly in Chicago, and we had correspondence with him even when in New York.

Q. Did he furnish the funds to carry on the business?

Objected to.

A. Not sufficient—no, sir; he furnished some funds.

Q. Did you follow and obey his instructions?

Objected to.

A. Yes, sir.

Q. What was the result after a few months?

A. The result was judgments and attachment suits.

Q. When did you first make the acquaintance of James B. White?

A. I think it was in April or May of 1878. I think Mr. James B. White came to Milwaukee with a letter from Alex. White to participate in the business of the oleograph Co. He went to work in the office with me, as requested by his brother, as an office assistant and to learn the details of the lithographing business. He was there until the removal of the business almost steadily. He might have been away for a week or so at that time.

Q. Did he draw any money from the business?

A. Yes, sir; Mr. White requested me in the letter of introduction to pay his board and give him what necessary spending money was required. I did so.

Q. On what account?

A. I think it was charged to expense account, as directed by Alex. White.

Q. Did you have any conversation with Alex. during the summer of 1878 as to the part which James B. took in the business? If so, state.

A. We had conversation several times regarding James. Mr. White was anxious to give him all possible instruction in lithographing business, office work rather—in order to give — a situation.

Q. Why was it that Alex. White did not, as to the outside world, want to have it known that he had an interest in the business?

Objected to.

A. Mr. White warned me several times about mentioning his name in connection with the lithographing business, but I do not know of his ever having given any particular reason.

Q. Did you ever hear James B. White say anything particularly as to his interest in the business?

Objected to.

A. I did on one occasion that I remember.

Q. State the circumstances.

A. It was at the time of moving the business from Milwaukee to Chicago. The question was raised about payment of a bill for moving the material from the Grand Ave. building to the Goodrich boat by Mr. Peak, house mover. Mr. Peak exacted $100 more
359 than I understood was to be paid for moving the material to the boat and threatened to attach our material at the dock. Mr. James B. White told Mr. Peak that the business was the property of himself and sister—I understood him to say sister; that he would be responsible for any difference. We settled in some way with Mr. Peak. I don't remember just now how.

Q. Did the statement of his so publicly made create surprise on your part, or had you reason before, from all that happened, to understand or infer that James B. had an interest in the business?

Objected to.

A. It didn't surprise me any, because I understood that the business belonged to the estate. I was surprised to know that Mr. White said that it belonged to James B. and his sister.

Q. Did you ever inquire which sister?

A. No, sir.

THURSDAY, *September* 14*th*, 1882—2 p. m.

Direct examination of E. C. THURBER continued:

Q. Are you familiar with the handwriting of Alexander White?

A. I am. The letters now shown to me are the letters written by Alex. White, in his own handwriting, to me. They were received by me while I was in charge of the business in Milwaukee.

NOTE.—Said letters are now offered in evidence and marked, respectively, Complainant's Exhibits 20, 21, 22, 23, 24, 25, 26, *26*, 27, 28, and 29.

Objected to by defendants' counsel.

These three telegrams now shown to me were sent to me while in charge of the business at Milwaukee by Alexander White.

The same are now offered in evidence and marked Complainant's Exhibits 30, 31, and 32.

Objected to by defendants' counsel.

Q. Do these letters and telegrams recall to your mind more vividly some of the details attending the business of the company while at Milwaukee?

Objected to.

A. Yes, sir.

Q. Now, will you please tell us whether, pursuant to Alex. White's request, you introduced and led James B. White into the whole situation of the business, its finances, books, debts, and credits, and in particular whether he was made familiar with the relations of Alex. White to Mr. Cotzhausen and the indebtedness arising on purchase of stock? Answer fully.

Objected to.

A. It was done by direction of Alex. White that he was led into the details of the business and made familiar with the same. He had access to the books and accounts at all times. He was familiar with the financial condition of the concern, and also with the relations of Mr. Cotzhausen with Mr. Alex. White.

Q. Did he while at Milwaukee become aware of the stringent condition of finances so frequently referred to in these letters?

Objected to as leading.

A. Yes, sir.

Q. Did you have any occasion to communicate with him on these various subjects and prevail upon him to meet his brother when thereunto requested in some of these letters?

Objected to.

A. I remember of conversing with him a great many times regarding finances. I don't remember of ever prevailing upon him to meet his brother, but several meetings were arranged for
360 them in Chicago.

Q. Was there anything in relation to the business or Cotzhausen's relations to White and White's indebtedness that was kept secret from James, or did you converse freely?

Objected to as very leading.

A. Nothing kept secret from him.

Q. Can you tell us whether, at any of the interviews relating to the business or the indebtedness to Cotzhausen between yourself and Alexander White, his brother James was present or participated?

Objected to.

A. I can't remember any now, because it was so long ago. Mr. Alex. White usually came up on the boat or train and I met him in the hotel and talked with him in the evening.

Q. Do you know what instructions James B. White got from his brother as to said business, and his particular part therein?

Objected to.

A. I don't know, excepting the directions given to me regarding his brother.

Q. Now, why was it that it did not create any surprise with you when James B. White, at the time of removal, in conversation with Peak, alluded to his interest in the business?

Objected to.

A. Because I was given to understand from the beginning that it was a purchase by the White estate.

Answer objected to.

Q. Did James B. White take any active part after the removal into the 5th Ave. building?

Objected to.

A. Yes, sir.

Q. Who represented the White stock interest when Alex. was absent from Chicago during the following winter, spring, and summer?

Objected to.

A. James B. White.

Q. Do you recollect the time when, in the early spring of 1879, Cotzhausen attached and a custodian was put in?

Objected to.

A. I do.

Q. Please explain how that came—what for that suit was commenced, and why.

Objected to.

A. It was for the payment of past-due notes. I think they were due on the purchase of Mr. Cotzhausen's stock. The company were endorsers on those notes.

Q. Why were those notes not paid?

Objected to.

A. Because there was no money to pay them with.

Q. Was it not for Alex. White to pay them finally?

Objected to.

A. Yes, sir.

Q. Where was Alex. White at this time?

Objected to.

A. I think he was in the East at this time.

Q. Did James B. White acquire knowledge of such attachment and the causes prompting it? If so, state particularly what was said or done by him or any one of you relating thereto.

Objected to.

A. He knew of the attachment. Mr. Munson had charge of our finances at that time, and Mr. James B. White went with him on one or two occasions to assist in raising money to raise the attachment.

Answer objected to.

Q. Did James B. White confer with his family in Chicago
361 relating thereto; and, if so, what report did he make, if any, to your office?

Objected to.

A. I don't know, of my knowledge, that he conferred with his family. I can go on and explain what I know.

Q. Please explain.

Objected to.

A. Mr. Munson conferred with James B. White on several occasions and went to the White residence, on La Salle street, with one of our directors, Mr. J. J. Lewis, for the purpose of raising money to lift the attachment suit on Mr. Cotzhausen's past-due note. Mr. Munson reported that he was referred to the attorneys for the estate, Messrs. Barker & Buell. I remember we got no money from either the estate or Barker & Buell.

Answer objected to, specially, as hearsay and with no knowledge of his own.

Q. Do you know whether James B. White, during that winter, assisted the company or Mr. Munson by any of his own means?

Objected to.

A. I remember of his making small purchases at different times and paying for them himself, and afterwards was settled with by

Mr. Munson. He carried a list of his outlays, and Mr. Munson used to settle up with him occasionally, when he had money.

Q. Was James B. White still in the business when the mortgage to the Cleveland Paper Co. was given?

Objected to as assuming that James B. White had been in the business.

A. I believe he was.

Q. Did he have a seat or desk in the office of the company when he attended to his correspondence and other business?

Objected to.

A. Yes, sir.

Q. What was James B. White's position or relation to the business during all this time generally reputed to be, if any, among those in the office or employed in the business generally?

Objected to.

A. He was my assistant; assisted in the books and correspondence and was considered the representative of the interests of the White estate.

Answer objected to.

Q. Was he recognized and treated by yourself, Munson, and others as an employee and assistant merely or as the representative of the interest of the White estate in the business?

Objected to.

A. I regarded him as a representative of the estate and treated him as such.

Q. When you say you treated him as such what do you mean? Explain.

Objected to.

A. In the absence of Mr. Alex. White I used to consult James B. White on matters of importance.

Q. Did he enter freely and participate when so consulted or what did he do?

Objected to.

A. He always manifested an interest in the affairs of the concern.

Q. Why was it that the company applied to Mrs. White and the family for assistance when the attachment was levied which you spoke of?

Objected to.

A. I think Mr. Alex. White was in the East at the time, and Mr. Munson and Mr. Lewis, representing our company, called on Mrs. White and family for assistance, supposing that the money which had been paid Mr. Cotzhausen was the money of the estate.

Q. Had you ever any occasion to confer with Mr. Barker or Buell on any of the company matters? If so, state the particulars
362 of how you came to do so.

Objected to.

A. At the time of the making of the mortgage to the Cleveland Paper Co. I accompanied Mr. Munson to Mr. Buell's office, on La Salle St., to have the mortgage, which we had with us, examined. Mr. Munson requested me to accompany him, and I did so.

Q. Was Mr. Buell the attorney of the company, or whose attorney was he?

Objected to.

A. He was not the attorney of the company; he was Mr. Alex. White's attorney, so I understood. Mr. White had requested Mr. Munson to go to Mr. Barker & Buell to examine.

Q. What did Mr. Buell say to the mortgage?

Objected to.

A. As I remember he said it was all right.

Cross-examination of E. C. THURBER by Mr. BUELL:

Q. In your direct examination you state that the only time that you recollect of James B. White's speaking of having an interest in the business was in his conversation with Mr. Peak, at Milwaukee, at the time of the removal. Is that true?

Objected to on the ground that the question infers that the witness stated that that was the only time.

A. That was the only time that I ever remember of hearing him make such a statement.

Q. What official position did you occupy in that company?

A. Secretary. The other officers were Louis Kurz, president. After removal Mr. Munson was elected treasurer, and after awhile he was elected president. I think it was in the spring of 1879 that Kurz went out and Munson was elected.

Q. What was the total amount of the capital stock of the company?

A. Thirty thousand dollars, only twenty-two thousand dollars of which was issued—F. W. Cotzhausen, $20,000; Louis Kurz, $1,000, and E. C. Thurber, $1,000.

Q. Who bought the stock of Mr. Cotzhausen, and what was given in payment therefor, if you know?

A. B. F. Guyton was the purchaser of Mr. Cotzhausen's stock interest. He was to give $5,000 cash and notes for the balance, payable in one, two, and three years. The balance was $15,000.

Q. Who paid the $5,000?

A. Mr. Alex. White paid a portion of it; can't say how much.

Q. Did Alexander White become obligated to pay the balance of the whole purchase price of the Cotzhausen stock?

A. Yes, sir.

Q. In what form did he become so obligated?

A. I think the notes were made jointly by Mr. Alexander White and Mr. Guyton.

Q. At what time—how long after the original purchase from Cotzhausen by Guyton?

A. I think Mr. White was on the notes originally given by Guyton to Mr. Cotzhausen.

Q. Were new notes given in place of the original notes given by Guyton?

A. I think not; not that I know of.

Q. Don't you know that the whole sum of the cash payment of $5,000 was assumed by Alex. White, and afterwards paid by him?

A. I know that the matter was arranged between Mr. Cotzhausen and Mr. Alex. White, but did not know in what manner. The balance of the purchase price of the stock was secured by the joint notes of Mr. Guyton and Mr. Alex. White, I believe.

363 Q. Was it not secured by the notes of Guyton guaranteed by Mr. Alex. White?

A. My impression is now that they were joint notes of B. F. Guyton and Mr. Alex. White.

Q. To whom was the Cotzhausen stock delivered—to Mr. Guyton or Mr. Alex. White?

A. We never had certificates of stock issued, but there was a bill of sale of Cotzhausen's stock delivered to Mr. Guyton and the transfer made on the books accordingly.

Q. Do you know what became of that bill of sale?

A. I do not. It was delivered to Guyton, and I don't remember of ever having seen it since. I remained secretary until December, 1879, I believe.

Q. Was James B. White paid anything by the company for his services?

A. While in Milwaukee James B. White's board was paid by the company and cash in small amounts, but don't remember how much. He had no stated salary.

Q. Had James any experience in book-keeping or in business affairs before he came to you in Milwaukee?

A. That I couldn't say, really.

Q. What did James do in the matter of book-keeping or otherwise?

A. He assisted generally, entering orders, correspondence, &c.

Q. What portion of the books did James keep?

A. I kept the accounts. He was a general assistant in office work. He did not make entries on the main account books of the company; only on the order book.

Q. Did he at any time make entries on the ledger, day book, cash book, or journal?

A. I think not.

Q. Did you and Mr. Munson consult Mr. Sisson, the attorney of the company, and take his advice in regard to the chattel mortgage given to the Cleveland Paper Co. before you brought it to Mr. Buell?

A. I don't remember of ever having consulted Mr. Sisson in regard to that mortgage.

Q. Do you know whether Mr. Munson did or not?

A. I do not.

Q. Can you not now recollect that you went from Mr. Sisson's office to Mr. Buell's office?

A. I do not recollect. My recollection is that we took it from Conger & Gorton's, the attorneys of the paper Co., to Mr. Buell's office.

Q. Do you recollect that the oleograph company paid Mr. Buell for his services?

A. I don't recollect that they did. The books were kept by Mr. Munson and the bills were paid by him.

Q. Did you consult Mr. Buell on behalf of the oleograph Co.?

A. I was invited to go with Mr. Munson, but don't know on whose behalf it was.

Q. Now tell us in relation to what important business affairs of the oleograph Co. you consulted James B. White. Specify each one particularly; what was said to James and what James said in return.

A. I remember on several occasions of having had several conversations with him in regard to the finances of the company, but I don't think I can give them in detail.

Q. Is that all that you can tell us in answer to that question?

A. I can only say that I had frequent conversations with him, but can't repeat them in detail, because it was several years ago.

Q. Give us the substance of any one of those conversations,
364 stating the time when it occurred.

A. I don't think I can answer that question any further than I have.

Q. What is your business now?

A. I am employed by the Chicago Lithographing and Engraving Company as a clerk.

Q. What relation has Mr. Cotzhausen to that company?

A. President.

E. C. THURBER.

SEPTEMBER 8TH, 1882.

Samuel B. Munson, Jr.

Complainant then introduced SAMUEL B. MUNSON, Jr., a witness, who testified as follows:

Q. Are you one of the parties against whom this complainant entered and recovered his judgments as codebtor with Alexander White?

A. Yes, sir.

Q. Do you recollect endorsing or guaranteeing the notes on which said judgments were recovered, dated February 1st, 1878, and executed by B. F. Guyton, payable to the order of Alexander White, and having on their back the endorsement and guarantee of Alexander White, S. B. Munson, Jr., and the American Oleograph Company, three notes as above, one, two, and three years, in the aggregate of fifteen thousand dollars?

Objected to.

A. I do.

Q. How did you come to write your name on these notes?

Objected to.

A. At the request of Alexander White.

Q. What interest did Alexander White have in said notes or in the purchase on account whereof the same were given?

Objected to.

A. I did not know. I had no idea what the notes were to be used for.

Q. How did you come to sign your name thereto? Explain.

Objected to.

A. Mr. White told me that he was a man of means and that he would give me a bond to indemnify me against any loss.

Q. Did he give you such a bond on such endorsement?

Objected to.

A. He did.

Q. What became of said bond?

Objected to.

A. I have it here.

NOTE.—Said bond is now offered in evidence, and appears to be dated March 1st, 1878, signed by Alexander White, in the ordinary form of an indemnity bond, in penal sum of $17,640, and reciting the fact that Munson endorsed at the request and for the accommodation of Alexander White and for no other purpose the three notes before referred to and twelve interest notes, aggregating $17,640.

Answer objected to by defendants' counsel; also bond.

Q. Has Alexander White saved you harmless from such endorsements, in whole or in part?

Objected to.

A. He has not.

Q. Alexander White testified yesterday, among others, as follows in detailing his total losses, to wit:

365 "S. B. Munson, Jr., commencing June 1st, 1876, $1,978.33, balance of amounts due me on various notes and accounts. I will state in reference to Munson account that it is at least the amount stated; may be considerably more."

Now, I desire to know from you what the facts are. (Objected to.) Is such statement true?

A. In June or July, 1880, at Mr. Sisson's office, Mr. Alexander White and myself went over our past transactions. I presented the cash book of the American Oleograph Company and vouchers, showing that I had paid out for his business about $5,000 more than I had received. Then there was an individual account between us, arising from discounting notes which, I think, showed that I was in debt to him in the neighborhood of $1,000. This account we

could not determine satisfactorily, for the reason that there were certain accommodation notes which were not in his possession. The accommodation notes spoken of were notes which I signed for his accommodation. I say that he is indebted to me outside of the $17,000 endorsements before spoken of.

Q. Mr. White claims in his testimony that the American Oleograph Company in or about July, 1879, owed him large sums of money. Now, what are the facts?

Objected to.

A. Mr. White had paid in certain amounts to the company which were credited to him on the company's books. What he paid to Mr. Cotzhausen does not show on the company's books; that is my impression. The amount to his credit on the company's books, I think, is lesss than $500.

Answer objected to as giving contents of books.

Q. Do you recollect the time, about July 17th, 1879, when Alexander White and yourself executed two judgment notes for $5,000 each to Cleveland Paper Company, secured by mortgage on the presses, stones, and other property of the American Oleograph Company?

Objected to.

A. I do.

Q. How came said notes and mortgage to be executed and for what purpose? State the facts in detail.

Objected to.

A. The company had no credit and no money, and it was for the purpose of obtaining capital to do business with that this mortgage was given. The suggestion may have come from Mr. Taylor, of the Cleveland Paper Co. That is the best of my recollection, and, after a consultation between Alex., E. C. Thurber, and myself, we thought best to make the mortgage, and did so.

Q. What was Alex.'s interest in the business at that time?

Objected to.

A. He was looked upon as the owner of the business.

Q. Did he control nearly all of its stock?

Objected to.

A. I ought to qualify the second preceding answer that I made. It was not decided to make the mortgage after consultation with us three alone. Mr. White consulted with his family, and said they would be willing a mortgage should be given if $500 was paid to them.

Q. What was your response or agreement in that regard, if any?

Objected to.

A. A check for $500 was made out and given to Alex. White, or else to J. B. White, but afterwards withdrawn and a less amount paid. It was taken by the Co. and did not run through the bank. The first check was not paid. It is my impression that nearly all of the stock stood in Alex. White's name on the stock ledger.

Answer objected to.

366 Q. Did the mortgage to the Cleveland Paper Co. cover all tangible property of any value?

Objected to.

A. That was the intention and fact.

Q. Who acted as counsel and legal adviser in relation to the matter?

A. We consulted Mr. Buell and Mr. W. H. Sisson.

Q. How did you come to consult Mr. Ira W. Buell; was he the attorney of your Co.?

Objected to.

A. At the request of Mr. White. Mr. Sisson was the attorney for the Co.

Q. Was Mr. Buell Mr. White's attorney at the time?

Objected to.

A. I understood that he was.

Q. What did Bro. Buell say when so consulted as to the mortgage?

Objected to.

A. He thought it was the best thing we could do.

Q. How long after the execution of this mortgage did you continue to stay in this lithograph business?

A. Five or six months; about eight to nine months.

Q. Did you ever see Alex. White taking an interest in said business after the mortgage to the Cleveland Paper Co. was executed, or did he abandon it?

Objected to.

A. I think he was at the office perhaps a week after the mortgage was given; then he went East, and it is my impression he did not return until Dec. He took no active part after he left for the East. He contributed no time or money.

Q. Was there a suit pending against the company, Alex. White, and yourself in favor of F. W. Cotzhausen on some of the notes held by him when this chattel mortgage was given?

Objected to.

A. Yes, sir.

Q. Do you recollect the time and circumstances when, in or about M'ch, 1879, said suit was commenced and the whole property of the Co. attached and a custodian put in?

Objected to.

A. I do.
Q. Where was Alex. White at that time?
A. I supposed he was in New York city or that neighborhood.
Q. Who represented him in his absence?

Objected to as assuming that somebody did represent him.

A. His brother James was in the office, and when the suit was brought went with me and Mr. Thurber to consult with Mr. Sisson in regard to the suit, the custodian, etc.

Objected to.

Q. How long was Alex. absent during that winter?

Objected to.

A. I think that he left Chicago in Dec., '78, and returned for a short time in Feb., 1879. He then left again, I think, and returned in April. It is my impression that he was here in Feb., '79, over a couple of weeks.
Q. Were you in the habit of speaking and conferring with James about general business matters during that time?

Objected to.

A. Yes, sir; anything of importance.
Q. Did James keep his office with the American Oleograph Co.; and, if so, how long?
A. It was my impression that he was with the American Oleograph Co. until the mortgage was given to the Cleveland Paper Co.
Q. Did James communicate to his family the fact of an attachment being levied by Co. [illegible]usen, as alluded to before?

Objected to as leading.

367 A. I presume that he did. I asked him to, and also called at the house myself. I also asked Mr. Ira W. Buell, and he went with me to Tenneys & Flower, the attorneys in the case for Mr. Cotzhausen.
Q. Was not the indebtedness on account whereof this suit, in the spring of 1879, was brought or the greater part thereof one that originally belonged to Alex. White to pay and grew out of stock purchase?

Objected to.

A. Yes, sir.
Q. Why did you call at the house of Mrs. White and family, and what took place?
A. I thought they should be fully informed as to what was occurring. I felt that they were interested in the business. I saw Mrs. White. She referred me to their attorney, Mr. Barker.

Question and answer objected to.

Q. When was this—on what occasion?

Objected to.

A. I think it was in M'ch, 1879; the time a custodian was put in on Cotzhausen's attachment.

Q. Did you go to Mr. Barker pursuant to such advice?

Objected to as leading.

A. I did.

Q. What took place?

Objected to.

A. I don't remember whether I saw Mr. Barker, for whom I called at the office; I don't remember. I saw Mr. Buell. I think that was the time Mr. Buell went with me to Tenneys & Flower.

Q. How did you come to go to Mr. Buell when you did not find Mr. Barker?

Objected to.

A. I supposed Buell was a partner of Mr. Barker, having offices together.

Q. Did James, at any time while you were connected with the Co., receive or draw from the same any money or other property?

Objected to.

A. There was no salary credited him on the books. I gave him checks for money which he paid out. Occasionally there were slight purchases made by him and paid for out of his own funds for the Co., and I would reimburse him from the Co. money when it was possible to do so.

Q. What was the general position or relation of James to the Co.?

Objected to.

A. I regarded him as the representative of the owners of Co. property and also being interested himself.

Answer objected to.

Q. I did not mean to ask what you in particular regarded him to be, but as to the understanding generally of those connected with the office or business, as derived from James' acts, conduct, and what he said to others. Now explain, if you can.

Objected to as asking for the opinion or conclusion of the witness.

A. I think the officers and employees of the Co. regarded him the same as I did.

Answer objected to.

Q. Please detail generally what in particular there was in his acts, conduct, or language that led yourself and associates to believe James to be representative of the owners and himself to be interested in the business.

Objected to.

A. I could not particularize. There was no important step taken without consulting with him and following his suggestions.

Q. Did the owners of the building or their representative ever collect their rents from the Co.?

Objected to.

368 A. Whatever rent was paid was paid to J. B. White.

Q. Was there any rent ever paid or collected until Alex. had gone East and conveyed his interests in July, 1879?

Objected to.

A. I think that no rent was paid up to that time. The cash book of the Co. would answer that.

Q. Did you ever have any conversation with James as to meeting the liability on account of which Cotzhausen had levied, or the reasons why the same was not met by White or family?

Objected to.

A. Yes; we had many conversations on the subject.

Q. Can you give us the substance of any of these?

Objected to.

A. My impression seemed to be that when Alex. White returned the debts would be fixed up, he being the business man of the family.

Q. What was the actual relation of Alex. White, or his relation generally reputed to be, in the circle of business acquaintances and friends throughout the years '76–'79 while you dealt with him with regard to the estate of his deceased father and the interest of the heirs and widow therein? State if you know.

Objected to.

A. He was considered the business representative of the estate and the heir to $\frac{1}{5}$ or $\frac{1}{6}$ of the estate.

Q. Did he, at any time, in conversation with yourself or others, introduce or hold himself out to be such and authorized to act on behalf of coheirs?

Objected to.

A. Yes.

Q. Had you rented during that time any part of the real estate belonging to the heirs and widow? If so, state what it was, and, especially, by whom the lease was signed.

Objected to.

A. 215 and 217 Lake St. The lease was signed by Alex. White during the years 1874, '75, '76, '77, '78, '79.

Q. Was the individual signature of Alex. White to said lease always found and considered ample and sufficient to bind his coheirs?

Objected to.

A. I would have considered it so. So far as I know, it was always sufficient.

Q. Did you, in course of time, have occasion to speak to James as to the position of Alex. W. as authorized to act for the family or

transacting business of the estate and heirs in his own name? If so, state shortly the substance, and what he said.

Objected to.

A. I don't remember of having any occasion to ask.
Q. Why not?
A. His individual signature was never questioned.
Q. Did you at any time hear or know of Alex.'s selling paintings or other property belonging to the estate?

Objected to.

A. No, sir; I knew nothing about the selling of the oil painting.
Q. Did you at any time know of Alex. selling the Lake Forest homestead?

Objected to.

A. I knew that a sale had been made; that's all.
Q. Did you at any time hear of his putting up buildings on Fifth Ave. and Lake St. on behalf of the estate and his coheirs?

Objected to.

A. I was aware that he had erected a building on 5th Ave.
Q. Were you aware that he conducted most of the business relating to the estate and coheirs in his own name?
369 A. I was aware that he conducted most of the business of the estate; whether it was done in his own name or in the name of his coheirs or administrator I could not say.
Q. Did you receive from him any receipts throughout the five years that were signed otherwise than Alex. White?

Objected to.

A. I think they were signed in that way.
Q. Did James B. White, after Alex.'s departure in July, 1879, assume charge and management of estate and family matters?
A. So far as I know, he did.
Q. Did he not execute the leases and sign the receipts in his individual name, although dealing on behalf of estate and coheirs?

Objected to.

A. So far as I know, he did.
Q. Had you ever, in continuing to deal with the owners of 5th Ave. building, otherwise any occasion after Alex.'s departure — that James B. White's individual signature was not recognized on behalf of mother or sisters?

Objected to.

A. I had occasion to pay rent and received J. B. White's receipt. The contracts or receipts were never questioned that I know of.
Q. Have you any knowledge of the value of the White estate or real property about the year 1878 & '9 or did you ever have any conversation with Alex., James B., or other members of the family about it?

Objected to.

A. Mr. Lind, a resident of Lake Forest and a neighbor of the White family, has often told me that the real estate which belonged to the family of the estate was worth $1,200,000, and that at the time of Mr. White's death he offered to take the real estate at that figure. I spoke to Alex. about it once; he said in reply that valuation by Lind was a little high on the real estate.

Answer objected to.

Q. When did you talk to Alex. about your conversation with Lind?

Objected to.

A. It was about the time he made the deed to me for the Lake Forest lots; I had never met Mr. Lind before that time.

Q. When did Alex. deed those lots to you?

Objected to.

A. In 1878; a year or two before the Cleveland Paper Co. mortgage was given. Then, at Mr. White's request, the property was deeded back to Mr. White, and in July, 1879, he deeded the lots to me at Mr. Buell's office or to the parties that I named. This last conveyance was at about same time Cleveland Paper Co. mortgage was given.

Q. When did you first make the acquaintance of James B. White; and, if so, what was the occasion? State the details.

A. I made the acquaintance of James B. White in the office of the American Oleograph Co., after the business was moved here from Milwaukee. I was introduced to him by his brother Alex. He said that Jas. had never had any experience in business and he wished to break him in, or words to that effect. He wished me to give him what information I could in regard to keeping books, opening and closing accounts, etc. I invited him over to my office on Lake St.; showed him how the accounts were kept and how the books were closed, as he expected to keep the books of the oleograph Co.

Q. Did James since that time take or manifest an interest in the management of the affairs of the oleograph Co.?

Objected to.

A. Yes, sir.

Q. Until what time?

Objected to.

A. I think that his presence ceased about July, 1879.

370 Cross-examination by Mr. BUELL:

Q. What official position did you hold in the American Oleograph Co.?

A. I was elected president some time in the spring of 1879; I acted as treasurer before that. The Co. kept no bank account of its own and I acted as treasurer of the Co. about Dec., 1878, or Jan.,

1879; I was at no time secretary. The total amount of the capital stock was $30,000, only 22,000 of which was issued. The stock was held and owned as follows:

Alex. White	20,000
Louis Kurz	1,000
E. C. Thurber	1,000

I held—in order to make me a director Mr. Thurber transferred some of his stock to me, a small amount; I have forgotten. I held a due bill from Mr. White for some stock—50 shares—but was never entered on the ledger. I think the due bill was to transfer to me or my wife, I don't know which.

Q. Then your interest was about one-fourth.

A. Yes, sir; I think a small amount of stock was placed to the credit of the artist, Lewis, in order to make him a director. Those are the only names I remember of in connection with the stock.

Q. Did James B. White ever hold any of the stock?

A. As far as the certificates of stock —, I don't think any were ever issued. I don't think James' name appeared on the stock ledger.

Q. Can you state of your own knowledge that Jas. B. White ever became the owner of any of the stock of the American Oleograph Co.?

A. No, sir.

Q. State particularly what important steps were taken by the Co. about which James was consulted.

A. I should say the first matters about which James was consulted was the arrangement of the shops and offices.

Q. What next?

A. The wherewithal to pay the bills.

Q. What next?

A. That would embrace the business. I don't remember of——

Q. Did James loan some money to the Co.?

A. I don't remember now of his loaning any money.

Q. Did you not so state in your direct examination small purchases were made by him?

—. Yes; he advanced small sums to meet small bills; I thought you meant capital; no large loans made.

Q. Did the Co. soon thereafter repay him for the money laid out?

A. Yes; as soon as they were in position they reimbursed him; I don't know how much; I don't know whether he was entirely paid; whether Co. owes him.

Q. Who were the other officers of the Co. besides yourself?

A. As directors Mr. Lewis, Mr. Thurber, and I; that made 3 directors. Mr. Thurber was secretary; I was president and treasurer. That was the time the Cleveland Paper Co. mortgage was given.

Q. During the time of your connection with the Co. do you know of any other persons holding any of its capital stock besides yourself?

A. The stock ledger shows that Mr. Thurber, Mr. White, Mr. Lewis, and myself were stockholders; no other names that I know of appeared.

Q. How much did Alex. White get individually from the sum raised by the mortgage of the Cleveland Paper Co.?

A. The Co.'s cash book would show that.

Q. Have you no recollection?

A. I have a little memor. showing that on July 25, '79, I gave Jas. White $100 for Alex. White. The next day Alex. White
371 received $100. On Aug. 4 there was paid out to Cyrus Bentley for Mr. White $100.

Q. What became of the balance of the money so raised?

A. The cash book of the Co. shows the disposition of every dollar of that money, and the accounts have been checked over by Alex. White, as I have stated before, in June or July, 1880, in Mr. Sisson's office.

Q. Did not the American Oleograph Co. get the benefit of the balance of the money raised by that mortgage?

A. There may have been other little charges of money received by James B. White or Alex. White, but the bulk of it went to the creditors of the oleograph Co.

Q. Can you specify any other amount that went to James, Alex., or any other member of the White family?

A. Not without reference to books or accounts.

Q. Do you wish to be understood as testifying that you could specify any other sum of money that went to them by looking at the books?

A. That I couldn't say; 3 years have passed since then. I don't recollect any more; I don't try to recollect. The books speak for themselves. The company was in extremely straightened circumstances at that time. When I consulted with Ira W. Buell I regarded Mr. Buell as Mr. White's attorney and friend, and it was at Mr. White's request that I consulted with Mr. Buell.

Q. Did you not ask his advice on behalf of the Co., and did not the Co. pay him for that advice through you?

A. I drew a check for 25 at the request of Mr. White and gave — to Mr. Buell.

Q. Was that for services rendered by him to the Co.?

A. At that time I did not know what it was for, and I think it was first charged to Mr. Alex. and afterwards charged to the company's expense account.

Q. It was the Co. that paid the 25?

A. As I said before, it was first charged to Alex. White's account and at his request charged to the Co.'s expense account.

Q. Do you remember that you brought that chattel mortgage to Mr. Buell, at his office, and have him carefully examine it before it was executed by the Co.?

A. Yes, sir; I think we did bring it there; Mr. Thurber and myself came with it to Mr. Buell's office together.

Q. Do you recollect, some time after this, of coming to the office of Mr. Buell and requesting him to induce James B. White to take an interest in the American Oleograph Co.?

A. I recollect of coming to the office of Mr. Buell to induce James B. White to put in more money to save what had been invested before.

Q. State how much, if you can, James B. White had invested in the American Oleograph Co. before that time.

A. What had been paid Mr. Cotzhausen I had no knowledge of, whether much or little.

Q. State, of your own knowledge, what amount of money, if any, Jas. B. White had before this advanced or paid to the Co..

A. Whatever he had advanced to assist the Co. will be shown by the books.

Q. Can you state, of your own knowledge, that James B. White had advanced to the Co. any sum of money? If so, specify the amount.

A. The answer I have given before is the only answer I can give.

Q. Then you cannot specify any sum or amount?

A. Not without the books.

Q. Do you mean to testify that you could specify any sum of money which James B. White had advanced to the Co. and
372 which had not been repaid to him, if you could see the books?

A. I might be able to.

Q. I ask you if you will now testify that you know you could do so?

A. If this examination had occurred a year or two ago I could tell definitely.

Q. I repeat the question; please answer.

A. That is all the answer I can give.

Q. Do you recollect that subsequent to the month of July, 1879, or at any other time you requested Mr. Barker to intercede with Mrs. Ann White to induce her to take an interest in the American Oleograph Co. or assist it by the advancement of money to it?

A. I think it very likely that I asked Mr. Barker to ask the White family to put in capital into the business in order to save what had been invested.

Q. Did you go and see Mrs. White yourself?

A. Yes, sir.

Q. Did you or Mr. Barker or either of you succeed?

A. Mrs. White referred me to Mr. Barker.

Q. Did not Mrs. White decline to do anything of the kind?

A. I so understood from Mr. Barker not from her.

Q. Did you not, about this time, yourself in the presence of Mr. Buell endeavor to persuade James to assist the Co. financially?

A. I probably —, but without success.

Q. Did not Mrs. White say to you when you applied to her that she knew nothing of the American Oleograph Co. or of Alex. White's affairs or connection with the Co., or words to that effect?

A. No, sir.

Q. What did she say?

A. She said that all matters of business she referred to Mr. Barker, her attorney.

Q. Was that all she said to you?

A. Yes, sir; our interview was very short.

Q. Did she not decline to have any conversation with you on business affairs?

A. That was all that was said. There was no necessity of her saying anything further.

Q. Did you ever talk with any other member of the family except James and Mrs. White in reference to the affairs of the Co.?

A. No, sir; one of the daughters was present when I talked to Mrs. White; she said nothing.

Q. You say that Alex. White told you that he consulted with the family in regard to making a mortgage to the Cleveland Paper Co. Do you know, of your own knowledge, whether he did or not as a matter of fact?

A. I think that he did, for he brought his brother James to get the check. It was in the evening, at 85 5th Ave.

Q. Is that all you know about it?

A. Yes, sir.

Q. You stated that the Co. paid no rent until after Jas. took charge of the building. Is that so?

A. That is my impression. The cash book will show if any was paid.

Q. Did not the Co. purchase and pay for the coal used in running the steam-engine for the building?

A. The Co. did, and in the fall a charge was made and charged up to rent account. That was after July, '79.

Q. State as near as you can to what amount.

A. I couldn't do that without the books. I would suppose that there were several hundred dollars' worth of coal purchased. I couldn't say whether over $500.

Q. Look at the papers now shown you, four in number. What are they; what do they show?

373 A. Those sheets are a synopsis of the cash books for the months of July and August, A. D. 1879, and show the amounts of cash received and the amounts paid; from whom received.

These papers now offered in evidence, marked Defendants' Exhibit 3.

Objected to by complainant.

Q. What amount do those papers show was paid to Alex. White out of the money received by the Cleveland Paper Co. mortgage?

A. These papers show that Alex. White received in the month of July $225.00; in the month of Aug. $250.00.

Q. The money that was paid in August was paid on account of rent, was it not?

A. The money paid on account of rent was charged to rent account. I would like to state right here that at the request of Mr. White I made a great many statements in writing to suit his pur-

poses, in the same way that I have signed accommodation notes for his benefit.

Q. Have you made any statement in writing for the accommodation of Alex. White? If so, specify which ones and what portion and part of such statements are not true.

A. I may have made statements in writing for his benefit and at his request which were not borne out by the books in the same way that I made notes to him and endorsed on the back of them (interest paid at certain dates). I do not say that these particular statements are borne out by the cash book. Mr. White had particular ideas about book-keeping—for instance, what is called loan account in these statements would be probably called cash account. In certain months the payments for the Co. were larger than the receipts, and the difference would be credited to loan account. Loan account was supposed to represent the treasurer's and cash account.

Q. You do not mean to say that the exhibit just offered is not a correct transcript of the books?

A. It is not a transcript of them; it couldn't, for only on one sheet are there any dates except the months.

Q. Does this exhibit show correctly the amount of money received by the Co. during the months of July and August and the amounts of money paid out during that time and to whom paid?

A. I think it does show correctly, but I would not be surprised if it did not. I kept the record of all cash received by me and all money paid out by me.

Q. I see in the month of August on the credit side an item of $250, loan account, White. Can you tell to whom that was paid and what for?

A. I could not without reference to my cash book.

Q. Can you not state that that was paid to James White on account of rent?

A. It was not paid on account of rent, for if it was it would be charged to rent account. It was paid at the request of Alex. White or James White and to them.

Q. Was any money paid during those two months on account of rent; if so, how much?

A. Nothing was paid on rent account.

Q. What was the amount of monthly rent that the Co. agreed to pay? State, as near as you can recollect.

A. A lease was executed before my connection with the Co., so I understood. I don't know of having seen the lease or the amount.

Q. Don't you know under what rental the Co. occupied its premises in the Fifth Ave. building?

A. No, sir; as I have no knowledge of ever having paid rent, except a coal account in the fall.

374 Q. Look at the paper now shown you and see if it doesn't refresh your recollection on account of rent of said premises inclusive to July 25th, 1879.

A. This paper shows that up to July 25 the Co. had bought 2,526.12 worth of coal on behalf of the White estate. I think the intention was that it should be charged to rent account.

Q. Prior to Aug. 1 did not the Co. pay, in addition, items amounting to $297.41 to be supplied on account of rent?

A. The engineer's wages, I judge from this statement, had been charged into wages account of the oleograph Co. from Sept., '78, which was previous to my connection with the Co., to May 3, 1879. This account is in my handwriting and made at the request of Mr. White.

FRIDAY, *September 15th*, 1882—10 a. m.

Cross-examination of S. B. MUNSON, JR., continued:

Q. State, as near as you can, the amount of rent due and unpaid for the premises occupied by the American Oleograph Company at the time of the giving of the mortgage to the Cleveland Paper Company.

A. I could not state any amount. I think the only charge ever made to rent account is the statement which was presented here for coal and engineer.

Q. How long had they then occupied those premises and at what rental? State as near as you can.

A. I think the company moved into the building in August or September, 1878. I had no connection with the company at that time, and if any lease was made it was probably made at that time.

Q. When did you become president?

A. I think I was elected president about the first of July, 1879.

Q. What was your connection with the company before that time?

A. In December, 1878, I assumed the position of treasurer, which I held as long as the company existed.

Q. Did you not, either while you were holding the position of treasurer or president of that company, ascertain the amount of rental which the company had assumed to pay for the premises occupied by it?

A. I may have had some conversation with Mr. Alex. White in regard to the amount of the rental, but I have no recollection of being asked for any rent. I considered the owner of the building the owner of the business.

Q. What proportion of the business were you interested in at the time the mortgage was given, and when did you become the owner of $5,000 of the capital stock?

A. I think Mr. Alex. White gave me a due bill calling for $5,000.00 worth of stock in December, 1878.

Q. From that time did you consider yourself as having an interest in the company to that extent?

A. Yes, sir.

Q. How much rent do you know of the company's paying prior to the making of the Cleveland Paper Company mortgage?

A. As I stated before, the only charge that I remember of ever being made to rent account was a coal bill and engineer's wages, as in the statement which has been presented before.

Q. Look at the memorandum now shown to you and state if that is in your handwriting.

A. It is.

375 Q. Does it show correctly as to time and amounts of the moneys raised on Cleveland Paper Company mortgage and paid out to Alex. White, James B. White, and Mr. Buell and Mr. Cyrus Bently?

A. I made many statements, as I said before, at the request and for the use of Alex. White, not strictly in accordance with the books. This may or may not be correct.

Q. Do you know any part of it that is not correct? If so, specify.

A. I could not answer without reference to the books.

Q. Do you now say that you made any statements in writing for Mr. Alex. White which you knew at the time to be incorrect?

A. Yes, sir. I think, at Mr. White's request, I made a statement of the assets and liabilities of the company showing a large amount of book accounts as assets, which accounts were old and had but little, if any, value.

Q. For what purpose?

A. I presume it was to be used in getting new capital and new parties interested.

Q. Did you presume that at the time he was making the statement?

A. I probably did not know for what purpose they were made.

Q. Did you or did you not know for what purpose they were made?

A. I couldn't give any other answer only what I have given.

Q. Did you ever find out; if so, when?

A. No, sir. I don't know as I ever knew how they were used.

Q. Did you, in such statement, certify old and worthless accounts to be good and valuable when they were not?

A. No, sir; they would be simply entered as book accounts.

Q. Do you know of Alex. White's representing them to be anything different from what your statement showed them to be; if so, to whom?

A. I had no occasion to know how he used them, and do not know how he used them.

Q. Recur, now, to the memorandum above referred to and state if the balance of the money, excepting the $475 mentioned in that memorandum, was not used for the benefit of the American Oleograph Company. If not, how was it used? I refer to the $5,000 raised by the mortgage to the Cleveland Paper Company.

A. The cash book of the Co. shows the disposition of every dollar of that money.

Q. Do you not now recollect that the balance of that money was so used?

A. I would make no statement without referring to that cash book.

Q. Who has the cash book, where is it, and under whose control?

A. It is in the hands of the receiver of the company, H. S. Dietrich, 167 Washington St.; at least I presume it is.

Q. Can you now state that any other sums of money besides those noted on the memorandum referred to, of the $5,000 raised by the

mortgage, was ever paid to Alex. White or to James White or to any person on the account of Alex. White?

A. I cannot without reference to the books.

Q. Do you believe you can by reference to the books?

A. I cannot say.

NOTE.—Memorandum offered in evidence and marked Def'ts' Exhibit No. —.

Q. Tell us, as near as you can recollect, when the company realized any money from the Cleveland Paper Co. mortgage, and when the mortgage was executed.

A. I could not give the date when the money was paid by the Cleveland Paper Company.

Q. Was it not all paid at one time?

A. I think it was not all paid at one time; as I said before, the cash book would show a complete history of the transactions at that time.

Q. Can you now state that any portion of that money was paid to the oleograph Co. prior to the 20th day of July, 1879?

376 A. From memory I could not make any statement.

Q. Can you do us the favor to examine those books of the oleograph Co. and tell us at a future date what disposition was made of the money raised by the mortgage to the Cleveland Paper Co.?

A. I could do so, and will do so.

Re-examination of S. B. MUNSON, JR.:

Q. Were you the treasurer and book-keeper of the company in December, 1878?

A. I assumed the position of treasurer in December, 1878, and did a portion of the book-keeping.

Q. Had you had an interest in the company prior to that time?

A. No, sir.

Q. Examine the paper now presented to you, under the date of Dec. 13th, 1878, and tell us whether that shows the inception of the relations between yourself, White, and the company and the true interests which you had therein.

A. Yes, sir; it does.

NOTE.—Said paper is now offered in evidence and marked Complainant's Exhibit No. 33.

Admission of paper objected to.

Q. Was the transfer of the fifty shares of stock of the oleograph Co. left in the form of this paper or carried out on the books of the Co. in White's name?

A. It was never transferred on the books of the company.

Q. Mr. White, then, to the extent of these fifty shares, stood in a quasi-trust relation to yourself, did he not?

Objected to.

A. Yes, sir.

Q. What reason or inducement was there for White's securing to you or guaranteeing the position of treasurer?

Objected to.

A. The reason would be the transfer to him of valuable stock of the Corrugated Elbow Company and my services to be rendered in future.

Q. Now, what was the real and true relation of yourself? Were you, in fact, merely the employee and officer of the corporation or were you primarily to represent and serve the stock interest that stood in White's name?

Objected to.

A. I considered myself the representative of Mr. White's interests in the company.

Q. Were you frequently called upon, while standing in the relation of treasurer apparently, to advance and raise moneys when the company had not sufficient funds; and, if so, how and for whose benefit and at whose request, in point of fact, did you so provide?

Objected to.

A. I was frequently called upon to raise money to meet the liabilities of the company at the request of Mr. Alex. White; also at the request of Mr. Thurber. I have also paid money to J. B. White, to be used for the company's business.

Q. Do you recollect that in December, 1878, and again in January, 1879, some paper matured which the company owed and which had been discounted by F. W. Cotzhausen, and that the company applied for an extension thereof on the ground that Alexander White was East and would soon return and arrange the same?

Objected to.

A. I think they did. They had such paper maturing, and made such request.

Q. Was not such request for an extension based upon a written statement sent to Cotzhausen to see of assets and liabilities
377 largely overestimating the true assets of the company?

Objected to.

A. I think that was the case.

Q. Had you received any general direction from Alex. White when you entered business as to the matter of carrying on the same, conferring and consulting with others during his absence, or generally as to the future policy and management of the concern? If so, state the substance.

Objected to.

A. I had received instructions from Alex. White, and directed to confer with E. C. Thurber and J. B. White. As regards the liability of the company and Alex. White to F. W. Cotzhausen, I had nothing to do with that, Mr. White stating that he would arrange with

Mr. Cotzhausen. The other liabilities of the company were to be met from the assets and receipts of the company.

Q. How did it happen that while asking the extension in December, 1878, the real assets of the company were overstated?

Objected to.

A. As I stated before, certain statements were made out at Mr. White's request, and I presume that was one of them.

Q. Did Mr. Alex. White, when absent from Chicago and your business appeared to be in trouble, not invariably refer you for advice and assistance to his brother James and Messrs Barker & Buell, his attorneys?

Objected to.

A. Yes, sir.

Q. Did not Mr. Alex. White, even after July, 1879, urge you and suggest means how to hinder Cotzhausen in the prosecution of his legal remedies, and how to defraud him?

Objected to.

A. He wrote me letters on that subject.

Q. Will you please look at these various letters now produced, and tell us in whose handwriting they are?

A. In Alex. White's. They were addressed and sent to me while in charge of the company at Chicago.

NOTE.—Said letters are now offered in evidence and marked Complainant's Exhibits Nos. 34, 35, 36, 37, 38, and 39.

Admission of which objected to by def'ts' counsel.

Q. Will you please explain the situation of the company and yourself shortly, at or about the time of this first letter, No. 34?

Objected to.

A. On the first suit brought by Mr. F. W. Cotzhausen the custodian had been withdrawn; I should think about May 1st. Then in July the company had made a mortgage to the Cleveland Paper Company. Soon after the making and recording of the mortgage a custodian was again placed in the office of the company, at the suit of Mr. Cotzhausen, about September 1st, 1879. I was endeavoring to get a bond to have the custodian removed and asked James B. White to sign such a bond; wrote to Alex. White to have him request his brother or some other party to sign the bond, and then this letter No. 34 was received by me.

Q. Had you by this time become the president of the company?

A. Yes, sir.

Q. Did you act upon and follow the suggestions of Alex. White as to the removal of chromos and other property not covered by the mortgage?

Objected to.

A. I did not.

Q. Did you act upon and follow the suggestions of Alex. White as to hindering and defrauding Cotzhausen in manner stated in these letters?

Objected to.

378 A. No, sir; I did not.

Q. How was Cotzhausen's attachment suit at this time finally arranged and settled?

A. By the giving of a second mortgage on the company's property covering all its tangible assets and the same property described in Cleveland Paper — mortgage.

Q. For what amount?

A. Between seven and eight thousand dollars.

Q. Whose debt was this primarily, and what for?

A. The notes given by Alex. White for the purchase of stock in the American Oleograph Co.—that is to say, the notes were made by B. F. Guyton and endorsed by Alex. White, myself, and the Co. One of the notes was given by the American Oleograph Co. for its indebtedness to Mr. Cotzhausen. I think this note was guaranteed by Mr. White.

Recross-examination.

Q. I will ask you if you will swear positively that you ever consulted Mr. Buell in regard to the American Oleograph Co.'s affairs prior to the execution of the mortgage to the Cleveland Paper Company?

A. With my present remembrance I could not swear positively.

Q. Can you tell us the date of receipt of Exhibit No. 34?

A. I think about September 9th, 1879. The other exhibits, Nos. 35 to 39, were received thereafter.

Q. What became of the Corrugated Elbow Company's stock given by you in exchange for the oleograph Co.'s stock and mentioned in Exhibit No. 33?

A. That identical certificate of stock was used as collateral in obtaining a loan from Henry L. Hill of $2,000 on a note signed by myself and Alex. White. The stock was never redeemed. I got a part of the money. James B. White stood at the corner of Madison and Dearborn Sts., and my impression is that he received $500 of it. In the afternoon of the same day or the next day I obtained New York drafts from the bank and gave them to James B. White for several hundred dollars; have forgotten the amount now. Mr. Alex. White obtained $2,000 of Corrugated Elbow Co.'s stock, which he pledged with Mr. H. B. Cragin to secure a matter of his own. This stock was never returned to me.

Q. How much of the money borrowed from Mr. Hill did you retain?

A. It is my impression that what I received I used in paying bills for the American Oleograph Co.

Q. What did James B. White do with what he had?

A. I didn't ask him.

Q. Why did you let him have any part of it?

A. At the request of Alex. White. I think that was in April, 1879.

Q. Whether he gave that money to Alex. White you do not know?

A. I do not think the $500 was ever paid to Alex. White. I think Alex. instructed James where to pay it or use it.

Q. Has the note to Hill given by you and Alexander ever been paid?

A. Yes; it was paid by a new loan, obtained through Mr. A. T. Bates, on the same security. I had to increase the security with Mr. Hill. I also paid Mr. Hill $300. I gave the second note on renewal.

Q. Can you tell by looking at your books what disposition was made of the money obtained on the first note signed by you and Alex. White?

A. I can.

Q. Can you tell us now where that stock is and who has it?

A. No, sir; I cannot.

379 Redirect examination:

Q. I now read from Complainant's Exhibit No. 36—Alex. White's letter to you: "If you had only paid that promised check I might have helped you some, I think, but not so very much. It would have given that confidence and trust which is essential and fundamental to any financial doings." Explain what this means, if you understand it.

Objected to.

A. The $500 was the amount of the check *was* given. I think it was made to J. B. White in order to get the consent of the White family to the Cleveland Paper Co.'s mortgage. This is the $500 referred to. The check was afterwards withdrawn, as I explained before, and a less amount actually paid. I ought to state here that on the occasion of my last visit to Mrs. White she spoke of her disappointment in not securing the $500. This was in the fall of 1879.

Recross-examination:

Q. State from which members of the White family any consent was obtained prior to making that mortgage, with whom of that family did you consult, and what was said by you and by them, if anything, in reference to this mortgage.

A. I talked with Alex. White and James B. White. The substance of the conversation was that it was the best thing that could be done. I saw no other member of the family at that time.

Q. Did you think that it was the best thing that could be done, and did you so advise?

A. I thought it the best and only thing that could be done, and did so advise.

S. B. MUNSON, JR.

Complainant then introduced Charles H. Peak and James M. Pereles, witnesses, who testified as follows:

Depositions of Charles H. Peak and James M. Pereles, of Milwaukee, taken before the undersigned, notary public, pursuant to stipulation and previous notice in that behalf had, on the 6th day of October, A. D. 1882.

CHARLES H. PEAK, being first duly sworn, testifies:

Q. Give us your name, residence, age, and occupation.

A. My name is Charles H. Peak; residence, city of Milwaukee, 174 Buffalo St.; my age is 42 years old; occupation, submarine diver and mover of heavy machinery.

Q. Did you, in the fall of 1878, move any machinery for the American Oleograph Company, then located at Milwaukee?

A. As to the precise time I do not know, but I moved such machinery for them from their shop, on Grand Ave. and West Water St., 3rd floor, to Goodrich's transportation dock, in Milwaukee.

Q. How did you come to undertake said job, and what was the contract?

A. The reason I undertook the job was because I followed that business. I understood the shop was to be moved, and I went to Mr. Thurber, and he told me to look around and give him my price for what I would move the shop. I told him, having gone there a second time, that I would move the shop—do the moving—for $250. He made some remark that there were some parties coming from Chicago; that he was only superintendent, and that when they came he would let me know. I think I was told to come again the
380 first time, and the second time I came the Chicago party was there.

Q. Who was the Chicago party whom you met there?

A. I do not know; he was a young man and appeared to have a good deal to say.

Q. What was the final bargain?

A. Thurber turned to this young man—I understood afterwards that his name was White; I was standing near the stove, and Thurber went to this man at the desk and said, Here is a man that understands the business as well as any one and will do it as cheap as any one else. The young man then asked, "How much?" I did not hear the reply. They stepped to the window and conversed in a low tone of voice, while the young man was picking his teeth with a tooth-pick. Thurber, after awhile, came back to where I stood and said, "Go ahead; you may do the work."

Q. Did you thereupon do the moving?

A. Yes, sir; I then did the moving.

Q. Now, what took place, towards the end of the moving, on the dock?

A. Well, they promised me money from time to time on account; I got some in the middle of moving, but not enough, and I wanted more. When I got through I think there was a balance of $150

coming to me—at least over a hundred dollars. Most of the property had been shipped to Chicago, but there remained here the engine and boiler. I went to Pereles & Sons to secure the claim for me. I think there was an attachment gotten out and put into the hands of the constable, but I do not think that we attached. Pereles & Sons ought to know.

Q. What was the reason for getting out the attachment?

Objected to by def'ts' counsel.

A. I wanted my money.

Q. Why did you not attach; what was done?

A. Mr. Thurber came and wanted to settle with me, but I told him he must now settle with my lawyers.

Q. Did the young man, Mr. White, take any part in the matter when you wanted to attach; if so, how?

Objected to by def'ts' counsel.

A. I cannot swear that this man's name is White; I think it was. I think the young man said, "Go on, finish the moving, and I will see that you are paid."

Q. How did he come to interfere?

Objected to by def'ts' counsel.

A. I don't know, unless he was a part owner; he appeared to be and acted so.

Q. Did he say anything as to his interest in the business or property; if so, what? Give us your best recollection.

A. I don't know; he didn't say anything to me that I recollect. He satisfied me in some way that I was going to get my money.

Q. Was he the same young man whom you had seen and met in the office before, when the contract was made?

A. I could not positively say that; there were two young men there.

Q. What is the reason that you did not attach and seize the property?

Objected to by def'ts' counsel.

A. Because Mr. Thurber came and wanted to settle with me.

Q. Did he settle with you?

A. Through Mr. Pereles he settled.

Q. Who furnished the money, if you know?

A. I don't know.

Cross-examination by Mr. FITCH:

Q. I understood you to say that there were two young men present at the office at the time of the bargain. Will you give
381 me their names?

A. One, I think, was Mr. White; the other I don't know, unless it be Mr. Muenzner. Understand me, I don't swear that this man was Mr. White. He was called around there by the name of White.

Q. Do you know what his first or Christian name was?
A. I do not.

CHAS. H. PEAK.

J. M. PERELES, being first duly sworn, testifies:

My full name is James Madison Pereles; I reside at Milwaukee; I am a member of the law firm of Nath. Pereles & Sons; my age is 30 years.

Q. Do you recollect the employment of your firm, in the fall of 1878, by Charles H. Peak in the collection of a claim against the American Oleograph Company? If so, detail the circumstances shortly that you remember.

A. I remember that we were retained to collect a bill, if necessary, by attachment against this company by Mr. Peak. It is a number of years ago, but I cannot place the time. We had only one such case for Mr. Peak. There were some proceedings taken; just what they were I don't remember. Either the same day or the next day after Mr. Peak put this matter in our hands the same was settled between the parties; they came here to settle—to our office—to settle costs.

Q. Who were the parties that came to your office on this settlement?

A. I know that Mr. Peak was one and one or two others representing the company.

Q. Give us your best recollection who the parties were that acted for the company.

A. My best recollection is that they were Chicago parties; at least I so understood them to be.

Q. Have you any recollection of the names of any of them?

A. Not of my own recollection; if the names were recalled to me I might recollect it.

Q. Can you tell us whether any one of those parties was introduced to you as Mr. White, from Chicago?

Objected to by def'ts' counsel.

A. The parties were introduced to me, of course, and the name of White is familiar to me in that connection.

Q. Have you any recollection as to the age or appearance of the one introduced as Mr. White, from Chicago.

A. I cannot say that I have a distinct recollection to give a description. On reflection I would say as my best recollection that Mr. White and Mr. Thurber were at that time at the office and introduced to me by Mr. Peak as being connected with the company. One of the two, I think, was secretary and treasurer of the company, and the other as being connected in some way; I don't recollect in what way.

Q. Do you know who furnished the money on said settlement?

A. Not any more than that it was furnished by the defendants in that suit—that is, the company.

JAS. M. PERELES.

TUESDAY, *December 12th*, 1882.

The complainant offers in evidence the record of certain judgments, executions, and returns thereupon, a summary of which appears as follows:

382 JAN. 11, 1881.

Superior Court, Cook County.

F. W. COTZHAUSEN
vs.
ALEXANDER WHITE, Impleaded with S. B. MUNSON, Jr., and AMERICAN OLEOGRAPH COMPANY. } No. 76501.

Damages	$7,204 30
Fees	7 50
	$7,211 80

Jan. 12, 1881.—Execution issued.
April 13, 1881.—Returned, no part satisfied.

M'CH 9, 1882.

Superior Court, Cook County.

F. W. COTZHAUSEN
vs.
ALEX. WHITE and S. B. MUNSON, Jr. } No. 80792.

Damages	$7,054 34
	7 10
	$7,061 44

M'ch 18, 1882.—Execution issued.
April 21, 1882.—Returned, no part satisfied.

M'CH 23, 1882.

Circuit Court, Cook County.

F. W. COTZHAUSEN
vs.
ALEXANDER WHITE. } No. 31070.

Jud't of	6,822 20 vac.
M'ch 25, '82	4,555 99
Fees	8 50
	$4,564 49

M'ch 29, '82.—Execution issued.
June 29, '82.—Returned, no part satisfied.

M'CH 23, 1882.

Circuit Court, Cook County.

F. W. COTZHAUSEN
vs.
ALEX. WHITE, S. B. MUNSON, Jr., and AMERICAN OLEOGRAPH COMPANY. } No. 31071.

$4,389 33 vacated.
4,289 33
8 50
———
$4,297 83

M'ch 29, '82.—Execution issued.
June 29, '82.—Returned, *nulla bona.*

F. W. Cotzhausen, being duly sworn, on oath states that the four judgments recovered by myself and before referred to were entered upon written evidences of indebtedness. The first, second, and fourth were entered upon notes dating back to February 1st, 1878, and the third one arises out of a note given by the American Oleograph Company to myself, payment of which was guaranteed in writing by Alex. White about August, 1878, when Peak was asked by him to move the shop from Milwaukee to Chicago. No part of any such judgments have been paid, and the full amount is now due and owing.

F. W. COTZHAUSEN.

Complainant then introduced Nathan T. Fitch, a witness, who testified as follows:

NATHAN T. FITCH, being duly sworn, deposes and says:

I am a practising attorney in the city of Chicago. I am at present a member of the firm of Buell & Fitch. Ira W. Buell is my partner. We went into partnership three years ago. I presume the Fitch who entered his appearance as attorney for the defendants, Colehour, Nixon, and Alexander White, in the partition suit of Ann White *et al. vs.* Margaret White *et al.*, was myself.

Q. Detail the circumstances how you came to enter your appearance in their behalf.

A. I was then officing in the Oriental building and was a neighbor of the attorneys for the plaintiffs in the suit. I think they
383 sent one or more of the defendants to me. It was understood that it was an amicable suit for partition. The defendants, who came, asked me to enter their appearance. I supposed it was to be an amicable suit and that their appearance was to be entered as a matter of form. I paid no further attention to it, probably, though I am not certain; would have to refer to the records to see.

Q. Was not your action in that behalf a mere matter of professional courtesy to the plaintiffs' attorneys?

A. If I am correct in my impression that that was an amicable suit my impression would be that that was the case.

Cross-examination:

Q. Can you not by reflection fix the time at which you entered into partnership with Mr. Buell?

A. The agreement for partnership was entered into between the 20th of December and Christmas, 1879, and took effect January 1st, 1880. What I have stated in my direct examination as to my supposition that the suit was an amicable one is not so much based upon any independent recollection regarding the facts as upon the fact that the certified copy of the record in the case does not seem to show that I took any further action as attorney for the defendants for whom I appeared.

Q. Are you quite sure that you did not charge and receive pay for your services?

A. I presume I did.

Re-examination by complainant:

Q. Did you ever receive any retainer fee that you know of or recollect from the parties for whom you appeared?

A. I do not recollect. If my employment was by defendants I probably did. If it was as a professional courtesy I did not.

N. T. FITCH.

Complainant now offers in evidence a certified copy of the petition in partition, circuit court, Cook county, Ann White *et al. vs.* Margaret White *et al.*, and subsequent proceedings therein, which is hereto annexed.

Defendants' counsel objects to the introduction of the certified copy upon the ground that it does not contain the master's report of the whole record of the case.

Complainant then introduced Benjamin F. Guyton, a witness, who testified as follows:

BENJAMIN F. GUYTON, being duly sworn, on oath states:

My age is 44. I now reside in the city of New York. Until the year 1879 I resided in Chicago. While at Chicago, during the year 1878, I was not connected in business with Alex. White.

Q. Will you please detail shortly your business relations with Alex. White in bringing about the purchase of a controlling stock interest in the American Oleograph Company towards the end of 1877 or the beginning of 1878; how it was brought about and the part which White took therein?

A. The latter part of the year 1877 Mr. Alex. White informed me that he heard of the American Oleograph Company in Milwaukee and thought that it would be desirable to purchase the same if possible and bring the same to the city of Chicago, to
384 occupy a portion of his building, known as Nos. 83 to 87 Fifth Ave., and for that purpose he desired me to go to Mil-

waukee to negotiate for the same, and at his request I went to Milwaukee and saw Mr. Cotzhausen. I met Mr. Cotzhausen at the Plankinton House as per agreement and received his terms of sale.

Q. What were your instructions from White?

Objected to by def'ts' counsel for all of the def'ts except Alex. White.

A. I was to get the price and terms.

Q. Was Alex. White the one who intended to join you in the purchase, to whom you made allusion in your letters written about this time to Mr. C.?

Objected to by def't.

A. He was.

Q. Was he the one who proposed to turn out certain real estate in Cook county as part consideration for said purchase if Mr. C. were willing to accept thereof, as stated in your letters?

Objected to.

A. He was.

Q. Did he furnish you about this time with a description of real estate which he so proposed to turn in on said purchase?

Objected to.

A. He did.

Q. Can you furnish us such description now?

A. Yes, sir; I have such a memorandum as was given to me by him and reduced to writing by myself at the time. I now produce the same.

NOTE.—Memorandum of real estate now offered in evidence and marked Complainant's Exhibit No. —.

Q. Said real estate was not accepted by Mr. Cotzhausen, was it?

Objected to.

A. It was not. He requested money or its equivalent, such as secured notes.

Q. The matter was finally consummated by giving a draft on New York for $5,000 cash and notes for the balance—one, two, and three years, with interest—signed by yourself and guaranteed by Alex. White, S. B. Munson, Jr., and the American Oleograph Company, was it not?

Objected to.

A. That is correct.

Q. Who procured the endorsement of S. B. Munson, Jr.?

Objected to.

A. Alex. White.

Q. What were the primary objects or inducements, as stated at the time by Alex. White, for interesting himself in such purchase?

Objected to.

A. Mr. White's object, as I understood from him, in purchasing a lithographic company was, as stated to me, to provide a tenant for the Fifth avenue building, and also for the purpose of giving his brother an opportunity of becoming familiar with the business or a business.

Q. Was this building suffering for want of tenants at the time?

Objected to.

A. It was, to the best of my knowledge.

Q. Do you know whether Alex. White before this time had made any efforts to procure such tenants with other establishments? If so, state the fact.

Objected to.

A. Of that I have no knowledge whatever.

Q. Do you not know that propositions had been made by him to acquire against some of the real estate belonging to the family a lithograph business, known as Shober and Carqueville?

Objected to.

384½ A. I do not know whether the real estate in question, referring to the memorandum, belonged to the family or to him individually; I supposed that it belonged to him individually, but the real estate mentioned in the memorandum introduced in evidence was submitted to Messrs. Shober and Carqueville in payment or part payment of their establishment which they offered for sale. They refused the offer.

Q. What was the position, actual or reputed, of Alex. White at the time toward the family estate or in the management of the affairs and business of the heirs and widow?

Objected to.

A. To that I cannot give a definite answer, any more than what I have understood, and not to my personal knowledge.

Q. Did Alex. White at the time hold the legal title in his own name of any real estate wherein himself, brother, sisters, and mother were interested as tenants in common?

Objected to.

A. Of that I have no knowledge excepting the information he gave me in regard to the real estate shown — this memorandum Exhibit No. —. In what he informed me he could give clear title. I do not recollect whether he said the title was in him or not.

Q. Were you aware of the fact that he was acting as the agent of his coheirs in a number of transactions, such as signing leases of the estate in his own name?

Objected to.

A. I do not recollect of being aware of it at the time, but subsequently understood from him that such was the fact.

Q. Did you as early as the spring of 1878 rent an office from him in the Fifth Ave. building?

A. I have no knowledge of such transaction.

Q. Did you establish or occupy an office in said building before the American Oleograph Company came down there; if so, by what right?

A. I did establish and occupy in said building an office temporarily, at the suggestion of Alex. White, for which I did not have to pay any rent; it was occupied with Alex. White, jointly; James did not occupy it to my knowledge, but came there occasionally.

Q. What proportion or interest, as a matter of fact, between yourself and White did the latter own or acquire in the first purchase of the American Oleograph Company?

A. At first the sole interest was owned by me personally until certain advances were to have been made by Alex. White, and in that event the controlling interest was to revert to Mr. White or his assigns.

Q. Did Alex. White, after nominally you had become the purchaser, take any active interest in the business, its finances or its management?

Objected to.

A. Not until just previous to its removal to Chicago.

Q. What was the reason that he did not want his name known in connection with said purchase?

A. He merely stated to me that for various reasons he did not wish to be known in the transaction, but never stated to me personally such reasons.

Q. Do you recollect of writing a letter to Mr. Thurber in the spring of 1878, wherein, amongst other things, you stated, "He," meaning James B. White, "wants me to learn him — business;" and, if so, how did you come to write to this effect?

Objected to.

A. I do recollect such a letter from the fact that Mr. Alex. White informed me that he desired his brother to learn the business, but whether or not it was at the suggestion of Alex. White I do not remember.

385 Q. Did you, under date of May 22nd, 1878, write, amongst other things, to Mr. Thurber that "the White estate will be divided up?" Now, if so, how did you come to write to that effect?

Objected to.

A. In regard to the date of the letter as stated I do not remember, but I did write such a letter somewhere about that time. The knowledge of the division of the estate was given me by Alex. White about that time.

Q. I now exhibit to you a letter, under date of May 22nd, 1878, addressed to Mr. Thurber and call your attention to the paragraph in question. If that letter was written by you will you please read to us the sentence referred to?

Objected to.

A. "I make him over some of my property as security, which he agrees to accept, and his estate will be divided in a few months, and then he can get all his money. He does not give any notes himself or borrow any money, and if Cotzhausen will give me four or six months White will endorse me. It is difficult to get money on real estate here now. Everybody is shaky, and men here who were and are worth over $100,000 each are compelled to give judgment notes in order to raise money."

Answer objected to.

Q. Did you, on August 1st, 1878, write a letter to Mr. Thurber in which you stated, amongst other things, Alex. White's interest in the estate of his father is over $300,000; if so, what knowledge had you on the subject?

Objected to.

A. I have a recollection of writing such a letter, but as to date I am not positive. The information I received from a banker in this city who appeared to know about his affairs.

Answer objected to.

Q. Anything else?

Objected to.

A. From others I received information that the estate was worth about $1,800,000.

Answer objected to as purely hearsay.

Q. What estimate did Alex. White, in conversation with yourself about this time, place upon his interest in the estate?

Objected to.

A. He never gave any figures, but merely stated that when the estate was divided he would receive his proportion and would be in condition to meet his obligations.

Q. When White, in July, 1878, went to Milwaukee and settled the attachment suit, substituting his own paper for yours, was that done by your consent and privity?

Objected to.

A. That matter was done without my knowledge or consent.

Q. Look at these two telegrams sent by yourself about that time to Mr. Thurber and tell us what plan it was of White's that they refer to.

Objected to.

A. I do not at present remember the plan proposed at that time. I think the two telegrams now exhibited by me were sent by me.

NOTE.—Said telegrams are now offered in evidence, but objected to by def'ts' counsel. The telegrams read as follows:

"JULY 7TH, 1878.

"If you carry out White's plan all will be well. He is waiting for your telegram."

"JULY 24TH, 1878.

"White leaves on morning train to close up matter. See my letter, and telegraph me about Popes to-morrow."

386 Q. Did you continue for a time to be interested in the American Oleograph Company after White had substituted himself in the negotiations with Mr. Cotzhausen?

A. I claim to have taken no interest or have any whatever from that time. My interest had been assigned about that time to Alex. White and S. B. Munson, Jr., by request of Alex. White.

Q. Mr. White claims that he loaned to you, as vice-president of the company, from January to July 23rd, 1878, $2,365; what is the fact about it?

Objected to.

A. In regard to that I never received such an amount from Alex. White in the form of a loan or for an interest in the concern, but I did receive such an amount of money, being proceeds of my note, negotiated in New York city by C. T. Bowen, amounting to $2,500, which said note was endorsed or guaranteed by Alex. White.

Q. Alex. White claims that he sustained heavy losses in dealing with you and that you are largely indebted to him; what is the fact about it? State shortly.

Objected to.

A. Of that I have no knowledge whatever, and furthermore claim I do not owe him anything.

Q. Are you the Benj. F. Guyton who signed his name as notary public to the verification of the petition in the partition suit? If so, state circumstances how you came to take said verification.

A. I am the same Benj. F. Guyton, notary public, as stated, and remember taking the acknowledgement of each of the named parties in the petition. I remember seeing each party and questioning them regarding to signature. I took the acknowledgement at the residence of the White family, at the request of Alex. White. I think he was present at the time.

Cross-examination waived.

BENJAMIN F. GUYTON.

NOTE.—Notice is now given by complainant's counsel that the plaintiff's proofs are now in readiness to be closed, subject only to the right of recalling Mrs. Ann White, who, as it is said, is now absent from Chicago on a Southern tour, and of finishing the examination of Lazarus Silverman, who appears to be a refractory witness and

unwilling to attend either for the purpose of signing the testimony so far taken or submitting to a cross-examination, and of Joseph N. Barker, one of the attorneys in this cause.

Complainant then introduced Lazarus Silverman, a witness, who testified as follows:

LAZARUS SILVERMAN, a witness called on behalf of the complainant, having been first duly sworn, testified as follows:

Direct examination by Mr. COTZHAUSEN:

Q. What is your name?
A. Lazarus Silverman.
Q. What is your residence and present occupation?
A. My residence is 3146 Calumet Ave.; present occupation is banker.
Q. What financial transactions have you had during the last 4 or 5 years with Alexander White, the defendant in this cause, or members of his family?
A. I think I cashed several orders or rather discounted several notes of the estate of Alexander White.
Q. Give me the details.
387 A. I haven't got them; I would have to look that up.
Q. I believe we served upon you a *subpœna duces tecum* requesting you to bring with you all notes, memoranda, book entries, etc., relating to these matters, did we not?
A. You did. It said, "Bring the books along." I could not bring the books along; they are too heavy.
Q. Can you bring such memoranda along as pertains to this precise subject-matter?
A. I can; if I knew you wanted that particular thing I could have had a clerk make it out. You asked me to bring the books over here; I thought I would not do that. I think there were two or three transactions by which I cashed the note of the estate of Alexander White for two or three thousand dollars at a time, which was paid by them. That is all the transactions, as far as I recollect, I have had with them; short notes.
Q. To what time do these financial transactions date back?
A. Oh, they may be two or three years; two years; I don't recollect exactly; I don't think any more than that. I think altogether there was about three different notes.
Q. Who signed them?
A. I think all the different members of the family; and some—not all of them. They were signed generally by the members of the family; those that were here, I think.
Q. When was the first one of those notes that ever came to your possession given?
A. That I would have to look up; I don't recollect.
Q. Who presented them for discount?
A. I think the second son. What is his name?
Q. James B.

A. I think in one instance I talked with Alexander White about it, but whether he presented the note or not I could not recollect; but I think he did in one instance, and in two instances I think it was the younger brother.

Mr. BUELL:

Q. You think he presented the notes for discount?
A. Spoke to me about loaning some money for a certain purpose.

Mr. COTZHAUSEN:

Q. For what purpose?
A. They needed it; I don't know what for; I could not tell. They needed the money that time for the payment of taxes, I think.
Q. When did you first become acquainted with the family?
A. I have known them for 25 years, I guess.
Q. What do you know of their financial relations during the last 5 or 6 years?
A. Well, I don't believe that I care to tell what I know of people's financial transactions unless there is any special reason why I should. I don't like to tell people's financial transactions without any special cause.
Q. You are now on the stand as a witness.
A. I simply don't want to expose people's business unless it is competent.
Q. Who had charge of the estate during the last 5 or 6 years?
A. Alexander White had charge of it, I think, until within the last few years, when his younger brother had charge of it, as far as I know; I think joined with his mother.

Mr. BUELL:

Q. You mean James, generally?
A. I mean Alexander; my dealings with him were such I always had the mother join. I think in any papers I loaned him any money I wanted the mother's signature. I really don't know whether the exclusive jurisdiction was in Alexander White or not; he attended to the business.

388 Mr. COTZHAUSEN:

Q. When do you recollect of having had the mother's signature first?
A. I guess in the first deal.
Q. Was that a discount of a note?
A. It is discounting that note loaned for some money.
Q. To what time did that date back?
A. It was short—two or three months.
Q. To what time did that first deal date back?
A. I don't know.
Q. About?

A. Might be three years; I don't know exactly; two or three years, I think.

Q. How long was it before Alexander broke up?

A. I don't know when Alexander did break up.

Q. Do you know now that he is broken up now?

A. I don't know what you call broken up. I don't know whether he is broken up now or not.

Q. Have you had continuous dealings with the family ever since that first deal in which Alexander and his mother joined?

A. Not continuous dealings; those are exceptional dealings—those I cited. On three different occasions, I think, I loaned him some money.

Q. What was the cause or occasion of your requiring the signature of the mother or other members of the family?

A. Because it is an estate, and Alexander White, as I understand it, left his property in an estate.

Q. Did you ever talk to Alexander about his relation to the family or his interest in the estate?

A. I don't recollect of any special conversation on that point. I supposed he was interested in the estate the same as the rest of them.

Q. Did he not have the whole and sole management of the whole estate for himself, mother, sisters, and brother?

A. I could not say as to that.

Q. What was he reputed or reported to be?

Objected to.

A. I never made the inquiry what he was reputed to be.

Q. What was that money borrowed for which he got from you on the first deal?

A. I did not ask him; I don't think what he wanted to use the money for; it was for the use of the family or the estate for some purpose.

Q. When was the next transaction?

A. Maybe six or twelve months after.

Q. In what shape was that?

A. That was given in a note.

Q. Which you discounted?

A. Yes, sir.

Q. Whose note was that?

A. I think it was a note made by the estate of Alexander White; I really don't know any other way. They had given me some collateral; I think the order for rent—hold on; let me see; I had her writing signed by Mrs. White and some other members of the family authorizing Alexander White——

Mr. BARKER: I object to the writing unless you produce it.

The WITNESS (continuing): Authorizing I should loan some money to Alexander White for the estate.

Mr. COTZHAUSEN:

Q. Was that directed to you?
A. Yes, sir.
389 Q. Did that come to you with the first deal?
A. I think it did; I think I required it.

Mr. BARKER:

Q. Can you prove that by your books?
A. No, sir.

Mr. COTZHAUSEN:

Q. What became of that writing?
A. I guess it was returned; very likely when the note was taken up. I don't know; I suppose it is.

Mr. BARKER: Please don't swear to anything you don't know.

Mr. COTZHAUSEN:

Q. What became of that writing?
A. I don't know.
Q. What do you think became of it?

Objected to, as it is no way to prove a writing.

A. I don't know; I could not tell whether I returned it or whether I got it; very likely I returned it; I could not say.
Q. What year was that?
A. 1879, probably, or 1880.
Q. Wasn't it a good deal earlier?
A. Well, I think it was in 1879 or 1880; if I thought it was earlier I would say so.
Q. Have you any memoranda of these matters in your books?
A. Yes, sir; I think the memoranda of those are on my books.
Q. Have you had any other dealings with the estate outside of the discount of such notes for the estate?
A. I don't think I did; I don't know of any.
Q. Did you ever have any conversation with any one outside of Alexander and James B. in relation to these financial matters?
A. I don't know whether I talked to Mrs. White or not; I seen her on several occasions in her house; whether I brought it up, the conversation or not, I can't recollect.
Q. What was the occasion of your going to see her at her house?
A. A friendly visit.
Q. You were well acquainted with each other then?
A. Yes, sir.
Q. Did you talk to her about this discount to her son Alexander?
A. I don't think I did; really I don't recollect of any; I hardly believe I did.
Q. What did you talk to her about?

Objected to.

A. About statues, oil paintings, and olden times. I wanted them to rent a house I had, and so on. I don't know it all; about the weather probably.

Q. Did you ever talk to her about any notes which you had discounted and which were not promptly paid?

A. I don't think I did; anything I discounted was always paid.

Q. Were you familiar with the handwriting of Mrs. White?

A. I don't think I was.

Q. Did you ever see any of the daughters?

A. I did, sir.

Q. Did you use to meet them at the house when you called there?

A. Well, on one or two occasions I did.

Q. Do you mean to be understood that you never called upon Mrs. White at the house on matters of business?

A. I might have talked some to her about business; I don't mean to be understood anything of the kind.

Q. Did the discounting of any of that paper or the guarantee on the part of Mrs. White have anything to do with any of your calls at the house?

390 A. I don't know whether it did or not; I could not recollect.

Q. Who is there outside of yourself who knows of these matters and who could inform us better than yourself?

Objected to.

A. About my visits—about what, sir?

Q. As to whether you had at any time felt prompted to call at the house in consequence of any of the financial dealings at your bank?

Mr. BARKER: That is fishing of the worst kind.

A. It is impossible for anybody else to know about that. When I call at anybody's place I don't tell any of my clerks what I go for, unless I go to make it an errand.

Q. Then you take a notary with you?

A. I don't see anything improper in the question. I will answer it just as it is.

Mr. COTZHAUSEN:

Q. Did you ever refuse to discount Alexander White's individual note?

A. I don't know whether it was offered to me or whether I ever refused it; I could not recollect.

Q. Did you have any conversation at any time with Mrs. White as to the necessity of her joining or guaranteeing by writing notes discounted at your bank?

A. Not that I recollect of. It is impossible for me to know that. I don't think I ever talked to Mrs. White about notes that I discounted; maybe I did, maybe I did not; I don't really know; I could not swear as to that.

Q. Did you ever have any business dealings with any of the daughters?

A. Not that I recollect.

Q. Will you please look up these various transactions in your books and give us by to-morrow morning a copy of the various book entries pertaining to it?

A. It can't be done by to-morrow morning. I want a week's time, at least. It is impossible to-morrow morning. You could not get it in three days.

Q. How long a time do you want?

A. I will tell the book-keeper to go ahead—as soon as he can get it out.

Q. How long a time do you want?

A. A reasonable time.

Q. Fix your own time.

A. A week.

Q. By that time you will file with the commissioner here a copy of all the book entries and memoranda relating to the financial transactions with the White family from the years 1876 to 1880, will you?

A. All that my book-keeper will give me. I will give him the order to find out all the discounts we had.

NOVEMBER 28TH, 1882.

Parties appear as before.

Examination of LAZARUS SILVERMAN resumed:

Q. Have you since the last adjournment availed yourself of the time given to bring your books and all entries thereupon and writings or memoranda in your possession relating to financial transactions between yourself on the one part and Alexander White and members of his family on the other part?

A. I did not bring any of my books here. I authorized my
391 book-keeper to make me all minutes relating to dealings with Alex. White, and I now produce the same identical memorandum given to me by my book-keeper, which contains the synopsis of all my dealings with Alex. White, and my book-keeper reports these were all the dealings he can find in the books with Alex. White. The memorandum reads as follows:

April 9th, 1879.	To cash note discounted	$500
April 16th, 1879.	By cash	500
July 15th, 1879.	To cash note discounted	2,000
Sept. 1st, 1879.	By cash	2,000

That is all he reports he can find.

Q. What is your book-keeper's full name?

A. I think it is Edward Chapin.

Q. How long has he been in your employ?

A. Not quite a year.

Q. Who was his predecessor?

A. Kunz; don't know his first name.

Q. Who was your book-keeper in 1878?

A. I don't recollect who kept that part of the books in 1878; would have to look at handwriting to be sure; think it was Henry Gerstly He is now in my employ as teller. Mr. Kunz is now in my employ as correspondent and book-keeper sometimes, changing around.

Q. On what book are the entries to be found which you refer to?

A. I don't know; either cash book or ledger; ledger I guess.

Q. Have you taken occasion to examine your books as to the entries called for during the year 1878?

A. I have given instructions that they should be examined for the year 1878.

Q. Have you taken occasion to verify any of the entries alluded to by your own examination?

A. I did not.

Q. Why not?

A. I leave all such matters to my book-keepers and clerks.

Q. Did Mr. Cotzhausen personally request you since the last adjournment to make thorough examination for book entries and writings in your possession, in conformity to the *subpœna duces tecum* served upon you, and did he tell you that it was a matter of great importance, and offered to pay all expenses arising from such search on part of yourself or others?

A. Mr. Cotzhausen called in my office at a time when I was very busy and my mind engaged in other things, and has said to me certain things — regard to the subject-matter. I think some of it is embraced in the question, but as to all the details, as the question reads, I cannot recall to my mind.

Q. If it is not convenient to bring your books here for the inspection of parties, will you please fix upon a time and place where the plaintiff or his attorneys may have an opportunity to inspect the books under the supervision of yourself or employees, the plaintiff now offering to make reasonable compensation for the time so employed, assistance rendered, or copies furnished?

A. My books are my own property, and I do not desire to have my business looked into by any strangers. If, however, the court should say that the plaintiff or his attorneys should have the legal right to make such examination I will consent to it; not otherwise.

Q. Since you refuse to comply with the above request, will you bring your books and all such as contain entries or memoranda, together with the original writings, letters, &c., in your possession, relating to the financial transactions referred to, for the years 1877,
392 1878 and 1879, into court, before this commission, to be used and referred to on your further examination herein, the plaintiff now offering to pay all reasonable expenses that may accrue thereby?

A. No, sir.

Q. State your reason for such refusal, if any.

A. The first reason is I have furnished a memorandum from all transactions with Alex. White in my first answer referred to; second, my books contain entries with a great many people which would be exposed, and I do not desire to expose the transactions of people dealing with me which may be injurious to them and myself.

NOTE.—Notice is now given upon the record, on part of the plaintiff, to the witness and all parties interested that an application will be made to the judges of the circuit court, at their office or in open court as may be, on the 29th day of November, 1882, at the hour of 9.30 o'clock a. m., to compel the production of said books and all original writings, letters, papers, and memoranda relating to the financial transactions between said witness, of the one part, and the defendants herein, or any one of them, of the other part, for and during the calendar years 1877, 1878, and 1879, and the examination of said witness, on motion of the plaintiff, stands thereupon adjourned and held open by order of the commissioner until Tuesday, December 5th, A. D. 1882, at 11 o'clock a. m.

And now on December 5th, 1882, on motion of complainant, the examination stands continued until December 12th, at 9 o'clock a. m.

FEBRUARY 1ST, A. D. 1883, at 2 o'clock p. m.

Parties met by consent as before.

Examination of LAZARUS SILVERMAN resumed.

Cross-examination by Mr. BUELL:

Q. Since your last examination have you refreshed your recollection in regard to your transactions with Alexander White and other members of his family? If yea, state fully what those transactions were.

NOTE.—Plaintiff objects to any evidence by parol as to the contents of books, papers, and memoranda the production whereof in court was heretofore called for and refused, or which are not first shown to be in the handwriting of the witness and made by him, at or about the time to which they relate, either for the purpose of refreshing his memory or otherwise.

A. I have not had any opportunity especially to refresh my recollection on the subject-matter. I ordered the book-keeper, Charles E. Chapin, to go over the books again, and to be sure to be right and give me all the transactions shown in the books with Alex. White, and Mr. Chapin done so and handed me the memorandum, which I now produce, certified to by himself, which reads as follows:

NOTE.—Contents objected to by plaintiff.

CHICAGO, *February* 1, 1883.

Alexander White in Account with Lazarus Silverman.

DR.			CR.
1879, April	9th.	To cash	$500 00
April	16th.	By cash	500 00
July	15th.	To cash	2,000 00
Sept.	1st.	By cash	2,000 00

393 I, Charles E. Chapin, book-keeper for Lazarus Silverman, certify that I have examined the books kept by him and find only the entries above enumerated therein from the year 1876 to 1882 concerning the dealings with Alex. White and no others.

February 1st, 1883.

C. EDWIN CHAPIN.

Q. Can you recollect of any other transaction which you had with Alex. White than those mentioned in the memorandum which you have just now given?

A. I do not.

Q. Can you recollect what securities or written promises you took from Alex. White for the cash charged to him April 9th, 1879, and July 15th, 1879?

—. I don't remember if I had security in both instances; I think I had security or an order on part of building next the board of trade. It was enough to cover the amount. I do not recollect from memory.

—. Can you recollect any transactions which you had with any of the brothers or sisters or mother of Alex. White? If so, state what they were fully and when they occurred.

A. I had some dealings with the younger White, I think James; the details, amount, and date I shall have to look after; I did not look for them.

—. None with the other members of the family except Alexander and James?

—. None that I know of.

—. Then you would not now state that you discounted notes signed by all the family or such as were here at the time?

—. I don't think I held any notes signed by the members of the family. I had some kind of a paper signed by some of the members of the family, but do not recollect what the contents of the paper was. I think it was signed by the mother and one or two of the sisters.

—. Did that relate to some real estate transaction?

Objected to because not best evidence of the contents and leading.

A. I cannot exactly tell if it had reference to real estate or loans; it was concerning the business. I know I had a paper.

—. What has become of that paper?

—. I cannot tell you whether it was returned to the Whites or I have it; very likely it was returned.

Q. Can you tell what was done in pursuance of that paper?

A. No, sir.

Q. Did that paper not relate to the sale of certain property on Wabash avenue by you?

NOTE.—Objected to for the reason before stated.

Q. Was that the only paper you ever had signed by Mrs. Ann White?

A. I only now recollect of one paper that she signed.

Q. In your direct examination you say: I think I have discounted several orders for the estate of Alexander White. Do you then refer to the order or orders which you took from Alex. White as security for the cash transaction mentioned by you as having taken place April 9th and July 15th, 1879?

A. Yes, sir.

Q. Can you state positively that you had a writing signed by Mrs. White and other members of the family authorizing you to let Alexander have money?

A. I cannot state it positively.

LAZARUS SILVERMAN.

Febr'y 1, '83.

394 JOSEPH N. BARKER recalled:

Q. Who acted as the attorney of record in entering the judgment by confession and warrant of attorney in favor of Mrs. Ann White against Alex. White, being the judgment referred to in the pleadings?

Objected to, as record is best evidence.

A. I do not recollect, but think it probable that I did.

Q. Did you advise said judgment to be entered?

A. I did.

Q. For what reason?

Objected to.

A. To secure Mrs. White, as far as I was able.

Q. What did you expect to accomplish or actually accomplish in her behalf thereby?

Objected to.

A. I expected to obtain a lien upon any property that Alexander might have and make what money I could out of it for her.

Q. What property was there of Alex. White's, real or personal, that was not conveyed to his mother, brother, and sisters before that time and that you knew of?

Objected to as calling for information obtained from his client, Mrs. White.

A. I did not know what individual property Alex. White was the owner of outside of the property inherited from his father's estate. I did not know but he might have other property.

Q. Was there anything done in said cause subsequent to the entry of the judgment?

Objected to.

A. I made efforts to find property, but did not succeed. An execution was issued and returned unsatisfied.

Q. How much has there been paid on said judgment or original indebtedness?

A. Very little, if any. Certain personal notes and such things of but little value were turned over to her by him.

Q. Have you got in your possession or under your control the written assignment or papers that passed between the parties when such transfer was made?

A. I have not. They are in the hands of the members of the family.

Q. Who drafted them?

A. I can't tell; probably Mr. Buell or myself.

Q. By whom and how was the amount ascertained and figured up in which Alex. White acknowledged himself to be indebted to his mother at the time?

A. After considerable trouble to get a statement from Alex. White of the moneys in his hands I had him take the books and leases, and, with Charles Driesslein, from the bank books and leases and other sources had them make up the account.

Q. Was the basis of such figures and the mode of arriving at the same, in relation to Mrs. White's interest, the same as with the other parties interested in the estate?

A. It was. I was employed by Mrs. White and the heirs to settle with Alex. White, and the basis was one and the same transaction.

Q. Have you or did you ever have a power of attorney from any of the heirs to yourself or your law firm; if so, where is it?

A. I have not and never did have. I was sent for and went to the house where nearly all of the family were and was employed by them to settle with Alex. White for all, and upon that employment, orally made, I made the settlement.

Q. Where is Alex. White now.

A. In New York city. I had a telegram from him day before yesterday.

395 Q. Have you filed or caused to be filed his answer in the second chancery suit of even title?

A. I have not; Alex. White agreed to file his own answer. I do not represent him in the suit.

Q. Did you not, when the plaintiff, in October last, was about to call the attention of the court to the failure of Alex. White to file his answer, request me to desist from a motion in that behalf and agree that it should be filed within a few days, or words to that effect?

A. I agreed at that time to tell Alex. White of the plaintiff's desire, and may have said that I had no doubt he would file it without an order. I knew from him that he had prepared an answer, which he said he was going to file. I do not know why he has not filed it.

Q. Has not the plaintiff repeatedly since called your attention to the fact and requested you to see to it, ever since Alex. White went to New York, that his answer was filed?

A. I think the plaintiff has spoken of it several times, both before Alex. White left for New York and since he left, and I have as often told him I was not Alex. White's solicitor.

Q. Since when did you cease to be Alex. White's attorney or to act in his behalf?

A. I never have been his solicitor in that cause.

Q. Will you please answer my question?

NOTE.—Defendant insists that the question is answered as practically and fully as the nature of the case requires.

A. I do not think I ever acted as the attorney of Alex. White, except in matters pertaining to the estate, until after the settlement with his mother, brother, and sisters. After that there were various suits in the courts, both of the U. S. and State, in which he had before that employed other attorneys, and at about that time he employed me to look after those suits, as those attorneys had given him notice that they would proceed no further, and after that I looked at those suits until they were completed.

Q. Where is Mrs. Ann White now?

A. I do not know, but I think in Florida. She has usually spent her winters there.

Q. You agreed some time ago you would let the plaintiff know when she was likely to return. Can you do so?

A. I cannot until to-morrow morning. I will enquire and give him the information.

Cross-examination:

Q. At the time that you were employed by Mrs. Ann White and the other members of the family to ascertain the amount due them from Alex. and to obtain payment for same or security for same did you know anything in regard to his indebtedness or claimed indebtedness to the plaintiff?

A. I did not. Mrs. White found that the money was gone, and she sent for me solely to have me see Alex. White and settle with him, as she was unable to get anything out of him as to their financial affairs.

Q. At the time that you perfected a settlement with Alex. on behalf of Mrs. White and the other heirs did you know the plaintiff or anything in regard to his claim against Alex. White?

A. I did not.

Q. In the settlement made Mrs. Ann White received from Alex. only personal property stated to be of but little value and no portion of the real estate in which Alex. had an interest. Why was the settlement made in this way?

Objected to as not cross-examination and irrelevant.

396 A. When the amount was found that Alex. owed his mother, brother, and sisters I reported to them and told them that Alex.'s property was not of sufficient value to pay his indebtedness to them, and I wanted to know how the deeds should be made. I told them that my estimate of the value was that it was not more than sufficient to pay two-thirds. Mrs. White then stated to me that I should draw the deeds to pay the children; that she would rather have them paid than to take it herself, leaving Mrs. White without payment, except the judgment note, which was afterwards entered up.

JOSEPH N. BARKER.

NOVEMBER 16, 1882—10 a. m.

Complainant then introduced JAMES A. CLYBOURNE, a witness, who testified as follows:

James A. Clybourn. I am a member of the firm of Clybourn & Smith, in the retail butcher business, at number 441 North Clark street. Our firm was the same in the spring of 1880. We did business with Alexander White and family.

Q. Do you recollect of any check being given to you by Alexander White on a Chicago bank for a small amount, payment of which was refused for want of funds? If so, state the details.

Objected to.

A. He did. The check given was somewhere in — neighborhood of sixteen and seventeen dollars. The check was presented at the bank by me and payment was refused. I took — check to bank myself. The bank was in the southwest corner of La Salle and Madison streets. I do not know its name. I first gave the check when I received it to Libby, McNeill and Libby for stock. They returned it to me, I think, inside of a week afterwards.

Q. Why was it returned?

A. Because there was no funds there to meet it.

Q. What, then, did you do with it?

A. Well, I took it to the bank after they returned it to me—the very day—and it was dishonored. I then wrote to Mr. White stating the fact that it had been returned. He sent word back to me that he was sick and unable to get out, but as soon as he could he would make it all right, which he did.

Q. Was this the only check of that kind which you received from him which was dishonored?

A. It was the only check.

Q. Have you examined your books so that you are able to give to us as near as possible the amount of said check and time received? If so, please state.

A. I have. The time was May 10th, 1879; the amount sixteen dollars and sixteen cents, as I remember; it might vary two or three months either one way or the other. I mean the time.

Q. Has Mr. Barker been to see you about this of late?

A. No, sir; he was not.

Q. Why do you say the time might vary two or three months?

A. Because I am not positive as to the time.

Q. What do your books show?

A. The books show that it was credited as cash and not as checks, I think, about May 10th.

J. A. CLYBOURN.

Complainant then introduced William S. McMicken, a witness, who testified as follows:

397 WILLIAM S. MCMICKEN, a witness called on behalf of the complainant, having been first duly sworn, testified as follows:

Direct examination by Mr. COTZHAUSEN:

Q. Give us your name and residence.

A. William S. McMicken, Aurora, Kane county, Illinois.

Q. Are you the uncle of Alexander White, the defendant in this cause?

A. Yes, sir.

Q. A brother of Mrs. White?

A. My wife and Mrs. White are sisters.

Q. Did you at any time loan any money to any one of the White family? If so, specify time, occasion, and particular circumstances. I now refer to the time covered by the years 1873 to 1880, after the death of Alexander White, Sr.

A. November 18th, 1874, I loaned Alexander White $1,000 to his own individual name. November 13, 1875, I loaned him $1,000 in his own individual name. January 1st, 1876, I consolidated these two thousand dollars that had been loaned previously and made a note; took an individual note of $6,000. May 1st, 1877, he paid $6,000. September 17th, 1878, loaned Alexander White, in cash, $8,800, which remains unpaid, only the portions that have been paid in interest notes. There has been eight notes of $374 each paid—eight interest notes—making this last loan. Alexander White proposed to have it given as the other notes had been given, to his own name. I objected, demanding securities if I loaned the money. He proffered securities of a merchant. I examined the securities and would not take them. I made the proposition if his brother James would sign the notes with him I would take *him*. He did, and I took them. I have now in hand a note without securities to the individual name of Alexander White of $102 and some odd cents. I forget the number of cents. That is all the notes that I have had anything to do with of Mr. White's.

Q. Give us the date of the last one.

A. Of the last $102.00?

Q. Yes.

A. I don't know that I can. Let me see. I think it was somewhere in December—but I am not sure—1881, a renewal of a note that had an existence previous to that for 2 or 3 years. I cannot give you the dates. I did not bring the note with me. Yes, here it is. The original note was $82. That was given in March, 1879; renewed, with the addition of interest, September 21st, 1881; $102.50; that is the note as it stands.

Q. What other financial or business transactions have you had with Alexander White or his family since the death of his father?

A. I have no business transactions with his family. I wish to ask a question now. Do you mean transactions between Alexander White and myself?

Q. That is the question.
A. I have had none that I remember of.

Mr. BUELL:

Q. Then the answer is: None with family and none with Mr. White?
A. As an individual, as I understand it.

Mr. COTZHAUSEN:

Q. Have you had any with him in a representative character?
A. Will you please explain what you mean by the word "representative?"
Q. Either as administrator, as agent, or trustee for his family, or otherwise acting on behalf of others.
A. I have had nothing to do with him or his family acting as the administrator on the estate of his family. I have had to do
398 with him as connected with the Au Sable Quarry Company.
Q. Have you at any time taken the title to real estate in trust for him or other members of his family?
A. I have taken the title in trust for him, but not his family.
Q. Specify in detail the times, occasions, and circumstances to which you allude.
A. I don't know that I can give you the dates now. I could not tell you; I have no memorandum.
Q. Did you ever have the title in trust for him or members of his family — a property in the town of Jefferson?
A. I had; not from his family, from him.
Q. Specify the circumstances how that conveyance in trust was brought about.
A. I was requested by the members of the Au Sable Quarry Co. to go on a bond of $2,000 in a certain suit pending in the Grundy county court, wherein the Au Sable Quarry Company and Michael Healy were the parties. I would not sign the bond unless I was secured. A deed was made out to me—quitclaim—of this property, as part security in the event of a judgment going against the Au Sable Quarry Co. In the course of time I had sold out my interest in the quarry to Alexander White—not to the estate, but to Alexander White individually. The suits were coming on in court and there was no money to pay for the carrying on of the suits. I advanced time and money, going down there and staying there. I paid lawyers about $60 or $70, I am not sure which, that had been employed by Alexander White, Jr., to attend to the case. The last trial that took place I was there as bondsman. I wanted to see the thing closed out; I wanted to get off the securities as soon as I saw there was no person that would advance money to carry on the suits. Hence a judgment would be obtained to a great deal more than the amount of the value of the property at that time entrusted to me. I would say also, in connection with that, that there was a mortgage given of the quarry. I hold now $400 of a mortgage for moneys

advanced by me to this quarry after I had sold out to Alexander White, Jr. There are some others in town, I should think, who have mortgages also. I don't know who they are and I don't know the amount of the mortgages. I then made propositions with Mr. Ray to dispose of certain properties that were given as security in certain ways if he would get me off the bond. He advised me to do so. I did so, and certain properties are remaining still unsold to meet the debts that had been contracted by Alexander White, the payment of taxes, and my expenses and lawyers' fees. That is the way it stands now. All these transactions were transactions that took place with Alexander White individually, not with the estate of Alexander White. I never knew Alexander White, Jr., as I call him always, until —. In all his transactions I have had with him there, as connected with the quarry or individually, I have recognized the estate in no way at all, but always said it was an individual matter between him and everything else connected with it.

Q. Give us the description of the property in Jefferson, as near as you can, and the time when deeded to you.

A. I cannot give you a description of the property. I could not tell you when it was deeded to me.

Q. Was it an undivided half of block 4 in the town of Jefferson?

A. I think it was; it was an undivided half of some block.

Q. When was it given to you? State the circumstances.

A. I cannot give you the date.

Q. Refer to the time as near as you can.

A. I have no memorandum of it, I think.

Q. Was it at the time of this last note of $8,800?

399 A. Oh, pshaw, no; long, long after; years after.

Mr. BUELL:

Q. Which was after?

A. The property that was put into my hands.

Mr. BARKER:

Q. Was after?

A. No; hold on; no; it was previous to my settling with him and getting that note; previous to that. I think that it was in 1876 or 1877. I think, to the best of my knowledge, it was in 1877; the beginning of 1877 or the last of 1876.

Mr. COTZHAUSEN:

Q. Did you afterwards deed this property to Mr. Barker by White's direction?

A. I deeded this property to Mr. Barker by White's direction.

Q. State the time and circumstances how you came to do so.

A. I cannot tell you. I have no memorandum to show what the time was. I think it was somewhere about 1881, the last of the year. I think September; somewhere about that time, I think. I was requested by Alexander White to make a deed to Mr. Barker—quitclaim deed of that property.

Q. Did you at any time take in trust the title to State street property in Chicago? If so, state the time and circumstances.

A. I took the title to a lot on State street at the same time that I took the title to the Jefferson property. I have stated the circumstances connected with it as security.

Q. What else did you take at the time as security?

A. Nothing.

Q. What became of the State street property?

A. It was deeded, by the advice of Robert Ray, to a Mr. Phillips—I forget his first name—Thomas Phillips.

Q. Did you have the authority or direction of Alexander White for doing so?

A. I did not.

Q. How did you come to dispose of property the title of which was taken in trust for him in the manner stated?

A. I done it to get my name off the bond, knowing that a judgment would be obtained in the Grundy county court for a larger amount than the value of that lot, and Mr. Ray proffered to get my name off the bond if I disposed of the property in the way I have done, with certain claims to be paid—a claim of Robert Ray, for services, $500; a lawyer in Morris, I think, $100. I had claims against them, for taxes and other moneys I had paid out, of $237 or $238. There was a claim, an unsettled claim, before the courts, as Ray said, for about $300, to make the title good; that is the reason why I sold that or disposed of it.

Q. What authority did you have from the parties interested so to dispose of it?

A. I have had the authority of one of those parties since to dispose of it in the manner that I have done.

Q. In whom was the title when it was deeded to you in trust?

A. The title was in the name of Mr. M. C. Kelly.

Q. What interest had Alexander White in the lot when it was deeded to you in trust?

A. I don't know as he had any. I took it for granted that he had. I don't know that he had any interest in it.

Q. Did he not procure the deed to be made to you as security, as before stated?

A. He procured the deed to be made.

Q. What other property have you ever held in trust?

A. I never held any other property in trust.

Q. What did Alexander White have to show for the property in Jefferson and on State St. when the same was turned over to you.

400

A. I don't know; it was an arrangement between Mr. Kelly and him.

Q. Did you execute any declaration of trust or other writing to that effect?

A. I did.

Q. Where is it?

A. I don't know.

Q. What became of it?

A. I could not tell you.
Q. Was it ever recorded?
A. No, sir.
Q. What did it say?
A. That I could not tell you.
Q. Give us the substance.
A. I could not give you even the substance from memory.
Q. To whom did the declaration of trust run?
A. I don't understand what you mean by "declaration of trust." I think it run to me, if that is the proper answer.
Q. Did he not execute papers in which you specified that you had received in trust or as security from certain parties the title to certain real estate and specifying the terms under which you held the same and agreeing to reconvey?
A. I think that that was something like it.
Q. To whom did these papers run?
A. I don't think they ran to any one but myself; I am not positive. There was such a paper, and I don't know but I may be able to find it.
Q. Have you and Alexander White always been on good terms? If not, specify the reason why.

Objected to.

A. We have always been on good terms.
Q. Have you always been on good terms with his family?
A. Always been on good terms with his family; yes, sir.
Q. Have the families visited each other at Aurora and Chicago?
A. Not often.
Q. When was Mrs. White at Aurora at your house the last time?

Objected to.

A. That would be a hard case for me to answer, too; it strikes me it was in 1874.
Q. When have you been at the house of the Whites in Chicago the last time?

Mr. BARKER: I will make a general objection. All this class of questions is objected to.

The WITNESS: Well, I could not tell you. I have not been in the house of Mrs. White since they lived up on Dearborn St., on the north side.

Mr. COTZHAUSEN:

Q. Have you conferred with Alexander White or James B. White about this case of late?
A. I haven't seen Alexander White in almost a year; yes, fully a year. I have seen James B. White last night, in his office, and this morning.
Q. Which is it, last night or this morning?
A. We only passed the common courtesies of relationship.

Q. Have you conferred with their attorneys in relation to this case since you came here?

A. I have simply asked Mr. Barker what it was about. I didn't know anything about it. I wanted to know what it was. I didn't know that Mr. Barker was one of the attorneys, though I supposed he was.

401 Q. Did you meet James at Barker's office?

A. I met James in his own office.

Q. Which is part of Barker's office, is it not?

A. Yes, sir; I should judge it is; it is on the same floor; the same door to go into.

Q. And which is also the office of Alexander White, is it not?

A. I don't know, sir.

Q. What did you have to do with the purchase of certain stock of the Protection Life through Sylvester Lind?

A. Nothing; I didn't know there was any stock sold to Sylvester Lind or anything about it.

Q. Is that the best explanation you can give?

A. Yes, sir.

Q. How did you come to loan Alex. money in 1874?

A. I loaned him $1,000. It is money, as I recollect, belonging to other parties. I was acting as agent for the parties with money to loan.

Q. At what rate of interest?

Objected to.

A. Ten per cent.

Q. On how long a time?

A. I could not say; I think they were on demand—the notes were; I could not say positively.

Q. What was the occasion of his asking you for this loan?

A. I don't know, sir.

Q. Did you enquire?

A. I did not inquire. You are referring to the first loan.

Q. Did he give any security?

A. He did not; his own name, personal name, individual name.

Q. Did he pay the note when it matured?

A. He paid the note when the demand was made or soon after.

Q. How did you come to loan him, November 13, 1875, $1,000?

A. He wanted it and I gave it to him—got it for him; he wanted to use it; I don't know how?

Q. What for?

A. I could not tell you, sir.

Q. Did you inquire?

A. I did not.

Q. What interest?

A. Ten per cent.

Q. Any security?

A. No security.

Q. January 1st, 1876, note of $6,000; what was that for?

A. Money loaned.

Q. What interest?
A. Ten per cent.
Q. What security?
A. None but his own name.
Q. Was that about the time when the deeds were made to you in trust?
A. Oh, long before.
Q. What did he want that money for?
A. I don't know.
Q. Did you inquire?
A. I did not.
Q. Did it surprise you any when he called upon you at these various times or any of them for such loans?

Objected to.

A. No; it didn't particularly.
Q. Why not?
A. Well, I could not say why not. I thought it would be all paid when due and damanded. I took it for granted he was honest
402 and would pay it; I did not ask him any questions in regard to how he was going to do—how he was going to spend it, or what he was going to do with it.
Q. You were pretty well aware before that time of the financial circumstances of the estate, were you not?
A. No; I was not.
Q. Did you not have a pretty clear idea as to what Alexander White, Sr., had left?
A. I had an idea, as a matter of course, but it was only from parties in talking about in the family—my wife, for instance.
Q. You knew that Alexander White when be died was estimated to be worth half a million dollars?
A. I didn't know it for a fact; no.
Q. But that was pretty well understood in the family, was it not?

Objected to.

A. I had never had any conversation with the family in relation to their means at all. All the conversations that I have had have been outside of the family.
Q. If you did not know the financial situation of the family what made you trust Alexander White so readily on his own note?

Objected to.

A. Because I thought he was an honest man; that is all.
Q. You knew at the time that he was in charge of the whole estate, personal and real, for the heirs and himself, did you not?
A. Not from any source that I could know anything about it; I knew it not from them; only hearing it said that he was. I had no conversation with any of the family.
Q. You did not doubt it, did you?

Objected to.

A. No; I did not doubt it; I had no reason to.

Q. Did you understand at the time that the crisis of 1873 had checked somewhat the disposition of and income from property, and that in consequence Alexander White was short of funds?

Objected to.

A. I had no conversation with Alexander White in relation to these things in 1873, either about the relative value of real estate or of the depreciation in the values of real estate.

Q. Were you not pretty well aware that the crisis had affected your relatives in that particular?

A. No, sir; I was not so; I was not aware of it; I was not living at Chicago at the time.

Q. Didn't you take more or less interest in the financial condition and welfare of the White family at Chicago?

A. Not specially, more than I would of your family, if I had known you.

Q. You did not during any of this time live at a great distance from Chicago, did you?

A. I lived at the same place that I am living now, 40 miles west.

Q. What was the cause or reason of your asking security in September, 1878, when Alexander White wanted to make another loan?

A. The principal cause was the fact of his desire to have it run ten years. I thought that ten years out of my life would make me pretty old, and I did not know what might take place in ten years if I was taken away; consequently the necessity of security in case I might be left behind. That was the case.

Q. How old was James B. White at the time of this note of $8,800?

A. I could not tell you; he was over 21.

Q. How much over?

A. I could not say, sir, really; he was of age that I knew, not from any of the Whites, but from my wife, who used to be in White's family a great deal, and knew all their ages before she was married.

403

Q. Is your wife still alive?

A. Yes, sir.

Q. Is she visiting the White family any?

Objected to.

A. I think she has not been there for some time.

Q. How long?

Objected to.

A. I am not positive, but I don't think she has been there since about 1874. She didn't visit much anywhere, but she didn't think anything less of the people because she didn't visit with them or didn't run around to see them.

Q. How did Alexander White come to ask you for this loan in September, 1878?

A. He knew that I had it in hand, and he came out there to Aurora probably five times to try and make the loan.

Q. What made him come out five times?

A. Because we didn't care much about loaning to anybody at that time; we had some other project in view for the use of the money.

Q. What interest did he agree to pay?

A. Somewhere about 8½ per cent.

Q. What did he want the money for?

A. I don't know.

Q. Did you make any inquiry?

A. I did not.

Q. Did he not tell you he had bought a lithographing business at Milwaukee, and that he needed this money to pay the first installment?

A. No; he didn't; but he told my wife that it was to pay taxes on the property of the estate.

Q. Did your wife persuade you to make this loan to him?

A. Well, we agreed about it. She persuaded me to make the loan; she thought it would be good.

Q. Did it surprise you any when he asked for this money?

Objected to.

A. No; it didn't, any more than it had done the first, when the money was loaned.

Q. But when you understood that he needed this money to pay taxes on the estate did it not surprise you that the estate had run so down that they could not pay the taxes?

A. No; it didn't surprise me at all.

Q. Didn't you talk to your wife about that fact?

Objected to.

A. I think not.

Q. Did you not talk to Alexander White about this circumstance?

A. That fact would not have made us talk about it, from the fact we supposed that the estate would have to pay a good many thousand dollars in taxes.

Q. Was it not a fact, well known to you and your wife, that the family had been short of funds for a number of years back?

Objected to.

A. No, sir; it was not a fact we knew.

Q. Did you not at one time, some years earlier, give the family or some member of the family $75?

A. I think not. I don't remember of anything of the kind.

Q. Now, what did you give Alexander White for the joint note of himself and brother in September, 1878?

A. I gave him, what I called cash, $5,500. I sold him 60 acres of land for $600. I sold him my quarry stock for $2,700, making it $8,800.

Q. Is that the quarry stock which you before spoke of—the interest which Alexander White bought *it* the company?

A. That is the same quarry stock I spoke of before.

404 Q. Is that the quarry stock which required those securities to be turned over and trust deeds to be executed which you then spoke of?

A. No; I held that quarry stock; it belonged to me.

Q. Did Alexander White have any connection with the quarry company before that time?

A. He had connection with the quarry company from 1874—the first of 1874; about the 1st January.

Q. This quarry company was substantially insolvent when you transferred the stock in September, 1878?

A. I thought not, sir; I knew not. It was his own proposition to buy it.

Q. Hadn't the defense of the suit which you before spoke of been virtually abandoned at that time?

A. At the time of my sale—is that the question?

Q. Yes.

A. No; it hadn't.

Q. Hadn't the trust deeds or securities been turned over to you which you before spoke of in connection with that company long before September, 1878?

A. Not long, they had not.

Q. When were the conveyances made to you in trust or as security which you before spoke of?

A. I cannot give you the dates, but I think it was in 1877 or 1876—the last of 1876 or the first of 1877; I think the last of 1876.

Q. Where were these sixty acres situated which you turned in as part cash?

A. They were in Will county.

Q. Was the title clear?

A. I think not. I didn't inquire. I gave them a quitclaim for them at his own request.

Q. How did he come to buy that sixty acres from you at that time?

A. He made the proposition to buy it.

Q. How did he come to buy the quarry stock?

A. He made the proposition to buy it.

Q. Was it not a condition of your response to his request for a loan that he should take this land and the quarry stock at the figures stated?

Objected to.

A. Certainly there was a condition. I would not have loaned him the money if he hadn't taken the whole thing. I wanted to get clear of the whole thing. I wanted to put it in shape so I could be away.

Q. What were the sixty acres, in the condition in which the title was, worth at that time?

A. I don't know.

Q. What was the quarry stock, in the condition in which the company was, worth at the time?

A. I sold to him for fifty cents on the dollar.

Q. What was the quarry stock, in the condition in which the company was, worth at the time?

A. I could not tell you, sir, more than the figures I sold it for. I was not acting as secretary or officer at the time.

Q. Did the sixty acres in the condition in which they were have any salable value?

Objected to.

A. I wrote to the recorder of Will county asking about what they were worth, and he wrote back to me that they were worth, I think, from $15 to $20 an acre.

Q. I have inquired *in* the condition in which the title was.

A. I don't know.

Q. What could the quarry stock at the time have sold for
405 in the market?

A. I don't know that there was any market value to it; there was none on the market for sale.

Q. Did it surprise you any that Alexander White and his brother gave you their joint note for $8,800 when you turned out but $5,500 in what you call cash?

A. I call it all cash; it didn't surprise me any; no, sir.

Q. Did you make any inquiry as to what he needed the money for?

A. I did not.

Q. Did you have any reason to think he was hard up?

Objected to.

A. I don't know why I should think——.

Q. Did you speak to your wife in relation to the matter?

A. The matter of what?

Q. Of giving him $5,500 cash on a joint note of $8,800.

A. Of course, I spoke to her.

Q. Did it surprise her any?

Objected to.

A. Not at all; she didn't seem surprised; she was rather inclined not to do it.

Q. For what reason?

A. She thought the money could be used to better advantage. It was putting her money in a shape it could not be touched in ten years; it was giving a great latitude.

Q. What caused you to waive security and take James B.'s signature when you didn't want to loan on Alexander's only?

A. I believe I answered that already—the length of time that the notes had to run.

Q. Did you consider at the time James B. any better than Alexander?

A. Yes, sir; I considered that he was better security, I thought, to meet the payment of that. I thought that both would. At the time that money was loaned I had no doubt of their ability to pay it.

Q. When did you first speak to Alexander White's family—mother, sisters, or brother—in relation to this loan?

Objected to, as it assumes he did speak.

The WITNESS: I didn't speak to any of them about it until six months had expired or after that he had got into difficulty; then I spoke to James about it as being one party to the note. I told him that if that was the case, that Alexander was so far short as I had understood he was, that I would look to him entirely for the payment of those notes.

Q. What did James say?

A. He said he supposed he would have to pay them.

Q. Did you speak to any one else in the family about it?

A. I took the notes at that time to James and asked him if he had signed those notes and showed them. He said he had. I said, "Did you know where they were running to?" "No," said he, "I didn't know where they were running to. I signed it as security because my brother asked me to, just as a matter of accommodation."

Q. Did you speak to any one else of the family about it?

A. I think I spoke to Elsie about it after this conversation had with James.

Q. What did you say to Elsie about it?

A. I don't know what was said. We were commiserating the fact the thing had taken the turn it had done, and told her James would be holden for the whole amount; about the same I had spoken to him about.

Q. What did she say?

A. I think she said that she would see it paid with James; that we would get our pay at that time.

Q. Was that in Chicago?

406 A. In Chicago, I think—no, it was in Aurora; she came out to visit me in Aurora.

Q. When was that?

A. I could not tell you.

Q. About?

A. It was after the time of his getting into trouble.

Q. Who was with her when she came visiting?

A. None.

Q. How long did she stay?

A. Oh, stayed probably 4 or 5 days or a week or something; I could not say.

Q. Had she been in the habit of visiting there before?

Objected to.

A. Not frequently; once in two or three years. She hasn't been there since and hadn't been there for years before, I think.

Q. Where did you talk to James?

A. I talked to James in his office in the Fifth avenue building; one of the rooms there; I don't know whether it was his office or not.

Q. Was that at the lithograph office?

A. No, sir; it was an empty room where I saw him.
Q. Did you see Alexander about it?
A. I think I saw him once.
Q. When?
A. I could not say.
Q. What did you say to him?
A. I did not talk anything with him at all; I did not care to talk with him.
Q. Why not?
A. Well, I didn't know but what my feelings might overcome my good judgment in talking with a man that I had had that amount of confidence in; with a man that had got the money in the manner he had got, reciting he would pay any time I would call upon him without any notice. I thought it was a breach of trust in him—that is all; I did not wish to converse with him.
Q. But you deeded the Jefferson property, at his request, did you not, to Barker?
A. Yes, sir; he was there and gave his consent and urged it.
Q. When was that?
A. I could not tell you.
Q. Was that in the summer of 1879?
A. I could not tell you the date exactly.
Q. Why did you deed that property at his request if he hadn't discharged his obligation to you?
A. I didn't consider that had anything to do with the obligations that I held; I did not consider that had anything to do with it; that was the way I looked upon it.
Q. Did your feelings overcome you at that time?

Objected to.

A. Well, sir, if you are a German and questioning me I would like to say this thing to you: I don't wish to be insulted. Take that for granted.
Q. Will you now, please, with this explanation, answer my question?
A. I will answer your question when you put a proper question to me.
Q. Did your feelings overcome you at the time when you deeded the Jefferson property to Mr. White's attorney at his request?
A. No; my feelings didn't overcome me.
Q. Has that note of $8,800 been assumed by the family?
A. It has not, sir.
Q. Have the interest notes been regularly paid?
A. They have been regularly paid.
407 Q. Did Elsie White keep her promise when she said to you that you should not lose any of the money?

Objected to.

A. James White had always paid it as he agreed to do.
Q. What has become of the notes of Alexander White which you hold outside of this $8,800?

A. They were returned to him when paid.

Q. What became of the note of $102 which you spoke of?

A. It is in my possession; not here; I have it.

Q. When is that dated?

A. I gave you the date before, I believe; September 21st, 1881.

Q. That was in renewal of one of March, 1879, was it not?

A. That was in renewal of one of March 19, 1879—$82, bearing ten per cent.

Q. What was that loan for?

A. Moneys advanced to him—little driblets; moneys advanced and services done that he paid me by giving his note.

Q. Did you have an accounting on March 19, 1879?

A. I was there and he wanted the note to be renewed. I have still an account of $24 against him.

Q. Did you have an accounting on March 19, 1879?

A. Yes, sir; I renewed the note to him at that time, if you call that an accounting. He asked to have it renewed.

Q. How did you come to advance him money at that time?

A. I did not advance him money at that time.

Q. To what time did the $82 date back?

A. That was made up of expenses—money that I had paid out for him, which he was to give me money to pay me back. He didn't do it, and gave me his obligation.

Q. To what time does that consideration date back?

A. Probably a year back of the first note being given; it might be less.

Q. Did your feelings overcome you at that time?

Objected to.

A. I am very much obliged to you. If you ever go on the stand as a witness and I as lawyer I will give you a piece of my mind. My feelings did not overcome me; they were very placid at that time.

Q. When did you see Alexander White the last time?

A. I saw him the last time when I made up that note—got that note, I think, sir.

Q. Was this last note of White's assumed or any part of it paid by the family?

A. That small note of $102; when I saw him last that was renewed.

Q. Was the last note of White's assumed or any part of it paid by the family?

A. No, sir; neither assumed or paid; neither the interest paid. He has not paid the interest.

Q. Do you mean to deny that in the latter part of 1875 you loaned to a member of the White family $70?

A. I think not; I don't recollect that.

Q. Have you had any other transactions, either of a trust or financial nature, with Alexander White or any member of his family beyond what you have stated before?

A. I think not, sir, that I know of.

Cross-examination by Mr. BARKER:

Q. At the time or about the time that you had the Jefferson property deeded to you did you make inquiry as to its value; if so, what was it worth?

408 Objected to as not cross-examination.

A. I wrote to a gentleman there that was acquainted with real estate in Jefferson and asked what the price was of that property. He made a reply——

Mr. COTZHAUSEN: At this stage complainant's counsel further objects to all hearsay evidence.

The WITNESS: —that there was no price could be attached to it, but he thought the value of it was not over $400.

Mr. BARKER:

Q. Did you make any offer to sell it?
A. No, sir.
Q. Further than that?
A. No, sir; I made this effort in reference to asking whether I could purchase the other undivided half for myself.
Q. You made that inquiry for that purpose?
—. ——.

Redirect examination by Mr. COTZHAUSEN:

Q. When did you first speak to James about this note of $8,800?
A. It was the following spring after the interest note was due. Alexander White failed to meet the payment of it. I went into Chicago to see about it and saw James and asked him then—Alexander had gone to New York—asked him then if Alexander had made any arrangements with him towards the payment of the interest note. I forget his reply. I think he said that he had made some arrangements for some money that was to be paid in. I told him he must not allow it to run; that I should look to him for it, and in a short time received my pay on that note from James. The note was paid.

Mr. BARKER:

Q. The interest paid?
A. The interest note paid.

Mr. COTZHAUSEN:

Q. How was the interest to be paid—semi-annually?
A. Semi-annually.
Q. According to the interest notes given?
A. There were interest notes given, and those notes were to be paid semi-annually.
Q. When did you first hear of Alexander being so far short?

Objected to.

A. About a few days previous to my coming into Chicago to see James.

Q. State the circumstances, what you heard, and from whom.

Objected to unless from some of the Whites—the family.

The WITNESS: I heard from my niece, who had been down to Hickory creek to her home. She heard that he had been involved or squandered somehow or other the avails of the estate, so he was $40,000 in debt. I can't put it any other way than that.

Q. Give me her name.

A. Is it necessary I should give her name?

Mr. BARKER: If you don't want to give names don't make such statements.

A. I won't give any names.

Mr. COTZHAUSEN:

Q. Why?

A. I don't wish to involve any other name in this affair. It was only given as a matter of gossip. I don't know anything about it. I supposed it was correct. From that I came in Chicago and heard it was from James. That is all.

Q. I ask you again to give me the name and present residence of that niece.

409 A. I will think over it; you can ask the question again; you cannot compel me to do it.

Q. I ask you again to give me the name and present residence of that niece.

Mr. BARKER: There is no objection to his telling the name of the person.

The WITNESS: I will give it. Miss Sarah A. Smith.

Mr. COTZHAUSEN:

Q. Residence.

A. Aurora.

Q. How is she related to you and the White family?

A. Her mother and my wife are sisters. Her father is a farmer, living out at Hickory creek, Will county.

Q. Is this Miss Smith related to Smith, of Buffalo?

A. No, sir; no relation at all.

WM. S. McMICKEN.

JOSEPH N. BARKER, a witness called on behalf of the complainant, having been first duly sworn, testified as follows:

Direct examination by Mr. COTZHAUSEN:

Q. You are the attorney of record in this case for the defendants, are you not?

A. Yes, sir; with the exception of Alexander White, I believe; I think he filed his own answer.

Q. Are you not mistaken in referring to this exception?

A. Possibly; I cannot now say; I think he filed his own.

Q. What causes you to say so?

A. It is nothing but recollection. I don't say I did not file his answer, but I don't think I did.

Q. Who prepared it?

A. If it is filed by me I prepared it myself; if it is filed by Alexander White he probably took the answer of the others for the form and put in his answer to suit himself.

Q. Have you no recollection on the subject as to whether you prepared that answer or not?

A. If it is signed by Alexander White I did not prepare it; if filed by him individually I did not; if I filed it, of course I prepared it.

Q. Had yourself and Mr. Ira W. Buell associated together as counsel for the White family in various matters and things pertaining to the estate during the years 1876, 1877, 1878, and 1879?

A. I doubt if we had anything to do with the estate in the years 1876 & 1877; we may have had something to do in the collection of rent and such things in these years.

Q. How was it in the years 1878 and 1879?

A. In 1879 we represented Mrs. White, Elsie White, Annie C. White, Mary S. White, Margaret White, and James B. White in a settlement with Alexander White.

Q. Who represented the defendants in the partition suit in which yourself and Mr. Buell acted for the complainants?

A. I think Mr. Fitch represented Margaret White or some of the defendants; I can't remember who were complainants and — were defendants.

Q. Who is this Mr. Fitch?

A. Mr. Fitch had an office in the same building with ourselves, and a practicing lawyer.

410 Q. Is he Mr. Buell's partner?

A. He is at present Mr. Buell's partner; he was not then.

Q. Did he put in an appearance and act on behalf of the defendants?

Objected to because the records are the best evidence.

Q. At the request of yourself or Mr. Buell?

Objected to.

A. I don't remember at whose request it was done; he did it.

Q. You mean to say you don't know how he came to be engaged?

A. I mean to say that as to the details of the engagement I don't remember.

Q. Who is Mr. Wait, to whom the cause was referred to take proof?

A. He is a master in chancery of the circuit court.

Q. Is he the Wait that used to be in partnership with yourself and Mr. Buell?

A. Yes, sir. I want to state that we did very little business for the estate of Alexander White since the year of the death of Alexander White, Sr. Our business, mostly, was in the little collections of rent the executor was unable to make. In any of his large transactions we were not consulted. In one of them that I can remember—his individual transactions. Prior to the death of Alexander White for 10 or 12 years I had been his confidential adviser I collected his rents and remitted to him monthly.

Complainant then introduced L. C. Paine Freer, a witness, who testified as follows:

L. C. PAIN FREER, a witness called on behalf of the complainant, having been first duly sworn, testified as follows:

Direct examination by Mr. COTZHAUSEN:

Q. Please state your name, residence, and present occupation.

A. L. C. Pain Freer. I reside in Chicago; am a lawyer by profession—not in practice.

Q. Did you at any time have any financial dealings with Alexander White? If so, detail the circumstances.

A. I will look at some memoranda here before I can answer. Some seven or eight years ago, perhaps more, I purchased a promissory note of $2,000, executed, I think, by a man by the name of Job Smith, dated August 20th, 1867, payable to the order of George S. Gillian ten years from date, with interest at the rate of six per cent. per annum, payable annually. This note was secured by a mortgage executed by Smith to Gillian on 80 acres of land in the town of Lake. The mortgage was recorded in the office of the recorder of Cook county, in Book 106, page 482, and afterwards re-recorded in Book 36 of Records, on page 301. I bought this note and mortgage, as I understood at the time, from Isaac R. Hitt, through the agency of Robert Reid, then a note broker here, and, I think, now in the office of the collector of the port of Chicago. The land was the east ½ of the southeast ¼ of section 22, township 38 north, range 13. Some time after I bought this mortgage I understood in some way, but how I don't now remember, that Mr. Alexander White had some interest in the land, and I think I learned that the title stood in Sylvester Lind. It ran along a year or two, and in the meantime Mr. White made his appearance and paid the interest on the note, I should think, for one year, possibly for two, and also paid some taxes to me that I advanced in the meantime. The impression I had got before that time was confirmed by his admitting that he either owned or had an interest in the land. When the interest came due, in 1876, I should say from memory, but my memory may be at fault, I suggested
411 to Mr. White that he give me his note for the amount so I would have some direct claim against him for the debt as collateral also and the note secured by the mortgage, and he did so. Possibly that was a judgment note. I have no recollection. That ran along—I am not sure how long that note ran, but my im-

pression is it ran until about the time the Job Smith note became due. He said he would pay his note if I insisted upon it, but would like to get some further time. I think I suggested to him that if he would give me another note signed by his mother and some other members of his family, how many I don't know now, that I would give up his note he had previously given me, and in the meantime hold the first note and mortgage as further security. In conformity with my suggestion they did give me this note, this family note signed by Alexander, Mary S., Annie C., and James B. White. This note I know was a judgment note. It is so in my memorandum. I see by my memorandum it appears to have been later than I previously thought. It appears to have been in 1878—August 20th, 1878, it seems to be dated—payable on or before August 9, 1879. That was for $2,080; I presume for some interest in arrears. Wait a moment; that must have been for $2,000 and the $80 is the interest accrued. I have no memorandum on the subject whatsoever. I have no memorandum on the subject whatever. I presume the note was for $2,000; that was my impression. There seems to have been $2,080 paid when the note was paid. I don't know that I can say anything further unless you direct my attention to some particular thing to the point.

Q. Was this note afterwards paid?

A. The note given by Alexander, Mary S., and James B. appears to have been paid on August 9, 1879.

Q. By whom?

A. The memorandum is by Miss White. I don't know which one of them. It appears by Miss White; I presume by Annie C.

Q. What did Sylvester Lind have to do with this transaction?

A. As far as I know, Sylvester Lind had never anything to do with the transaction while I owned the mortgage and note. I did not negotiate with him and he never paid me anything on the mortgage, principal or interest.

Q. What was the occasion of your taking this family note—its immediate consideration?

A. I didn't feel quite certain that the real estate was sufficient security or satisfactory to me and preferred to have this family note, believing and supposing them to be wealthy. My impression is also that the mortgage was a common mortgage, without any power of sale in it. The tract had been improvidently cut up into small lots, secured by the mortgage, and had been sold for taxes once or twice and the costs were enormous. I went out to see the land and I found it was rented for about $100, so I thought I would prefer to have the notes of the Whites.

Q. When the note was paid by Miss White did you execute any assignment of the securities you held?

A. I have no independent recollection as to the executing of any assignment or release.

Mr. BARKER:

Q. Give the receipt as it appears in your letter book.

A. I find in my letter book a receipt, dated November 27, 1877, in the following words: "Alexander White has deposited with me, subject to his order, a mortgage executed by Job Smith, the same heretofore recorded in the office of the recorder of Cook county, in the State of Illinois, in Book 26 of Records, on page 301, together with a promissory note herein specified and assignment of said mortgage placing the title in me; also an assignment of said
412 mortgage by me in blank. Chicago, November 27, 1877."
Signed by me. I find a memorandum also in my books that the Job Smith note was paid Nov. 27, 1877. It is not in my handwriting, but in that of my son who keeps my books. I supposed it was given at the time of the family note of Whites was handed over, but I am not sure. I mean to say I suppose this entry of the Job Smith note was made at the time the note and the papers were handed over. As a matter of fact, the note was not paid, unless my memory is greatly at fault, until the note of the Whites was paid.

Q. Was the family note ever extended or renewed?

A. I am very certain the family note was never extended or renewed.

Q. What was the cause or occasion of your asking a family note in preference to Alexander White's individual note?

A. I had my negotiations with Mr. Alexander White, and I became impressed with the idea that a note signed by the members of the family would be better security to me than his note alone, and as he desired the Job Smith note to run longer I decided to have as good security as I could get.

Q. What impressed you with that idea?

Objected to.

A. I have no very definite recollection as to what impressed me with the idea that he was embarrassed in any way. I don't think that I was aware that he was embarrassed, but he wanted time once or twice; had spoken to me about the time of payment, and I think I rather became impressed with the idea that he was speculative, and it would be better for me to get a note of the entire members of the family.

Q. Did you not at the time understand from him or others that the family were interested in the lands?

Objected to unless the family were present.

A. I never understood in any way that the family were interested in the mortgage lands.

Q. Have you any recollection of any conversation with other members of the family but Alexander?

A. I never spoke a word to any other members of the family in regard to this transaction, and never saw one of them from that day to this, except when the family note was paid a young lady came to my office, who called herself Miss White, and gave me a check for the note, that I remember.

Q. What then became of the Job Smith mortgage and note?

A. I have no recollection whether at the time this note was paid the papers were handed over, or whether they were handed over afterwards or previously.

Q. Had you delivered up any of the original notes or securities before the family note was actually paid?

A. I haven't the slightest recollection on the subject as to whether I had previously to the payment of this family note given over the Job Smith mortgage and note, and I don't find any memorandum in my books.

Q. What is your impression as to the time when you first parted with the Job Smith note and mortgage or the lien upon the land?

Mr. BUELL: We object to an impression unless it amounts to a recollection.

A. I haven't the slightest recollection as to when the Job Smith mortgage and note was handed over nor to whom.

Q. Did you ever hear of an assignment of the Job Smith note and mortgage to one Graham?

A. If there was any assignment to a Mr. Graham I have no recollection on the subject at that time. It is quite possible that there may have been an assignment in blank of the mortgage and
412½ the papers handed over in that shape, but I am quite confident I knew nothing of any such man as Graham in the transaction. Still, it is a good many years ago, and my memory may be at fault.

Cross-examination by Mr. BUELL:

Q. You spoke at one point of your testimony of obtaining a note signed by the mother of Alexander White, and yet you didn't give the mother's name as one of the signers of the note. Did or did not the mother sign the note?

A. I think it is quite likely that I suggested to Mr. White—

Q. Alexander?

A. Yes, sir; Mr. Alexander White—that his mother sign the note so the impression now remains on my mind that she did sign it. I don't know the elder Mrs. White's name, and I don't know in fact that she did sign the note.

Q. Suppose her name to be Ann White, then you wouldn't now say that she signed the note?

A. I would say that she did not sign the note, unless she made a mistake in signing her name. I never saw Mrs. Alexander White the elder, but had the impression that she signed the note.

L. C. PAINE FREER.

Complainant then introduced Sylvester Lind, a witness, who testified as follows:

SYLVESTER LIND, a witness called on behalf of the complainant, having been first duly sworn, testified as follows:

Direct examination by Mr. COTZHAUSEN:

Q. State your name, age, and residence.
A. Sylvester Lind; my residence is in Lake county, Lake Forest; my age is 73 going on 74.
Q. Do you know Alexander White and family, the defendants in this cause?
A. Yes, sir.
Q. How long have you known that family?
A. Since the fall of 1837.
Q. You knew the father?
A. Yes, sir; I was acquainted with Alexander White's father.
Q. Where was the White family living until 1876?
A. They were living, when I got acquainted with them, on the North Side.
Q. Prior to 1876—I mean since the fire?
A. They were living in Lake Forest, I think; I may be mistaken; I am not sure.
Q. When did they sell their home at Lake Forest?
A. I don't recollect what year. The papers are in your office with you (referring to Mr. Barker).
Q. Do you know why they sold that home?
A. No, sir; I don't know why they sold it.
Q. Can you give us some idea what that Lake Forest home consisted of, what kind of property it was?
A. Suburban property; very good property if a man has plenty of money to spend on it, but it is only outside property.
Q. Why did you say good property for a man that had a good deal of money to spend on it?
A. It was rather expensive keeping up. There was two or three green-houses—large green-houses—on it; that is, I under-
413 stood, the reason they sold.
Q. Mr. Barker at one time while examining a witness here called it an elephant.
A. That showed it was expensive to keep it.
Q. Do you think he was correct in that assertion?
A. I don't think that was the worst story ever he told; I think he came pretty near the truth.
Q. Did the property yield or produce any income?
A. I could not say it did, sir; you might get something for the flowers. I could not tell; there was a good many flowers, but I don't think it pays expenses.
Q. Do you know how much they got for it when they sold it?
A. I do not, sir; I don't recollect.

Q. Were you familiar and pretty well informed as to the real estate left by Alexander White, Sr.?

A. No; I could not say I was; I knew part of it, but did not know it all.

Q. Had you ever any occasion to inform yourself as to its estimated value?

A. I don't know as I had, sir.

Q. Did you not at one time have occasion to put an estimate on it or make an offer for it?

Objected to.

A. I got an offer.

Q. State the particulars.

A. That was on the whole; I got an offer from a party as to what they would take for the estate, but I never had a valuation of the whole estate, only a kind of offer; they asked me what they would take for it.

Q. By real estate do you mean the realty?

A. Everything they had, in money and anything else. An offer was made in a kind of open, loose way. I didn't know whether it would amount to anything.

Q. Did you communicate the offer to the White family?

A. I think I made the offer to one of them; I can't tell which of them it was.

Q. What was it?

Objected to.

A. Twelve hundred thousand dollars. I cannot tell you anything more about it. I asked them if they would take that for it.

Q. Did you get any answer?

Objected to.

A. I cannot tell what they said; I think they could not say anything about it at present; they didn't think it was worth it.

Q. Did you have any financial dealings with the family since 1872?

A. Not with the family.

Q. Did you have any real estate dealings with any one of the family?

A. Alexander White.

Q. Will you please state the time and circumstances?

A. I cannot state the time, sir. I simply bought a piece of land for them, as I was in the land business—real estate business.

Q. State the circumstances; all about it.

A. There was 80 acres of land that was in the market and he thought he would buy it. I made the purchase for the parties. This 80 acres of land I bought for Mr. White and paid for it, but it was his money I paid it with.

Q. Where was the land?

A. In South Chicago.

Q. Can you give us a more particular description?

A. I don't know the number. It was in the town of Lake, about 7 miles, I should think, of the court-house, but I am not sure
414 exactly of the distance.

Q. When did you buy it?

A. I haven't the dates now.

Q. About the year?

A. It may have been 1876; I am not sure what year it was I bought it and paid for it.

Q. What was the price?

A. $400 an acre.

Q. How was it paid for?

A. It was paid so much cash and the balance some time.

Q. How much cash?

A. I cannot tell you how much cash I paid; I kept no account of it, because I had no interest in the land any more. I bought the land and paid it, as the agreement was.

Q. In whose name was the title taken?

A. It was taken in my name.

Q. Will you please state how you came to take the title in your name?

A. I bought a good deal of land, and it has been taken in my name; by and bye I turned it over to the parties.

Q. State how you came to take the title to this land.

A. He asked me to have it in my name; I made the contract in my name.

Q. What reasons did he state for taking the title in your own name?

Objected to unless the White heirs were present.

A. I don't know that he stated any reason. He knew I had a good deal of land in my name; it was for people I had bought for.

Q. For whom did he buy this land?

A. I am not able to recollect. I think it was a man from Ohio.

Q. For whom did he buy this land?

A. That I am not able say—for himself or his family; I cannot say. I don't know who he did buy it for, whether it was for himself or the family.

Q. What did he say about it?

Objected to.

A. It is so long a time that I can't recollect.

Q. Did you ever talk to any one of his family about it?

A. No, sir; I don't recollect that I did. It was a common practice. I had a great deal of land bought that same time for Mr. Farwell & Company; by and bye I turned it all over to him and made a commission.

Q. Did you give White any papers in return showing the terms and conditions on which that property was bought, and for whom the title was held?

A. I gave him up the notes as he paid them.

Q. Did you give White any papers in return showing the terms and conditions on which that property was bought, and for whom the title was held?

A. Yes, sir; he got all the notes, all the papers, all the agreements.

Q. Did he have anything showing that you held the title in trust?

A. Certainly, he had a quitclaim deed.

Q. When was that given?

A. That I cannot tell, sir: I didn't keep any date; that was given a little after I bought the land.

Q. To whom did that quitclaim deed run?

A. Alexander White.

Q. Was that ever recorded?

A. No, sir.

Q. Why not?

A. I cannot tell.

Q. What was done with the land after you bought it?

A. Alexander White, he wished me to mortgage to a certain company.

415 Q. Give us the name of the company.

A. The Protection Life Insurance Company, that he held stock in; he was a stockholder in that company. I mortgaged it for $20,000. The assignee or receiver of the company, who held my note and mortgage, he foreclosed the mortgage and sold the land by order of the court.

Q. When?

A. Well, it is about a year ago—a little over a year ago.

Q. Who owns the land now?

A. The receiver or assignee; he has the land. There is a redemption on the land of 18 months, but that is very near closed up.

Mr. BUELL:

Q. The receiver bid it in, you mean?

A. He bid it in.

Mr. COTZHAUSEN:

Q. What is the receiver's name?

A. Coak, I think it is.

Q. What has Alexander White done about this land or the mortgage or foreclosure?

A. I don't think he has done anything; he said he hadn't any means.

Q. What other land have you ever had the title of in trust?

A. That was the only land I had in trust.

Q. What other business transactions or dealings did you ever have with Alexander White?

A. I had no transactions with Alexander White of any account but that.

Q. Have you ever visited the family since the death of the father, in 1872?

A. Yes, sir.
Q. When?
A. I visited them several times; I could not say when.
Q. Of late years?
A. I haven't been over this season, but I have seen them very often—some of the family. I could visit them any day, for that matter.
Q. Have you had any conversation with them in relation to your dealings with Alexander White?
A. Not a word.
Q. Have you talked with them about Alexander White?
A. Not a word; not at all.
Q. Have you talked with them about this land in South Chicago?
A. Never, but Alexander White and Barker; I talked to them; they could redeem that, but they didn't do it.
Q. Did you not repeatedly state heretofore that the title to this land was taken by you in trust for Alexander White and the other heirs of the estate?

Objected to.

A. Well, I don't know whether it was or not; I might have said that; I might have thought it was for that; he might have told me; I cannot tell; it is a good while ago, and I took no memorandum of it; it was simply a transaction in real estate; I was buying and selling real estate all the time, and he told me to buy that for him. I don't know what objections he had to take it; if he had any it might have been for the family and might not; I cannot say.
Q. How was the money paid?
A. There was part of the real estate paid for; then gave me notes for the balance. I paid them as they came due; he supplied the money.
Q. How did you get the money from him, by checks; if so, whose checks were they?
A. By checks; it was his own checks. I didn't pay for the land until I got the money; it was paid.
416 Q. How were the checks signed; on what bank?
A. Signed by Alexander White. I am not sure that I could swear to it, but I think it was on the Traders' Bank; I am not sure; I think it was.
Q. Are you not aware that he had but an administrator's account at the Traders' Bank?
A. It was in some bank anyhow that the money was got; I cannot tell you the name of the bank now; I don't recollect. I can't tell where he kept that, whether it was in that bank or not.
Q. What do you know of his being the agent or representative of the family in matters of the estate?

Objected to.

A. I only knew by rumor; I never asked his mother or sister.

Cross-examination by Mr. BUELL:

Q. Whose notes were given for the purchase of this real estate?

A. I cannot tell you whether it was his notes. I came to buy it because I was well acquainted with General Stayer, and I was a friend of his. I cannot tell whether it was his notes or mine. He told me to buy that land for him. I think he said I had better put it in my name; it would be easier handled.

Q. By him you mean Alexander White?

A. Alexander White. I did not know any of the family in the transaction. He came in the office there every day.

Q. You had no conversation with any members of the family about the trade?

A. Not at all; they were not here; they were in New York.

Q. I will call your attention to the property at Lake Forest, and ask you if you do not know that they sold flowers and grapes from their green-houses?

A. I know they sold flowers sometimes; I don't think they sold enough to pay expenses.

Q. They cultivated some fine *cornelius* that they sold?

A. Yes, sir; in the green-houses; I don't know what they amounted to. I think that was a little more expense. Taking the winter altogether, I don't think they made anything. I was not acquainted with the transaction.

Q. You think the sale would amount to a considerable sum, would you not, from what you know about it?

A. I don't know the amount. I don't think it amounted to a great deal.

Q. The man who has got it now——

A. He would sell it very quick; it depends on the winter; it takes a great deal of coal to heat them. They might have made something on that; I don't pretend to know; they kept it quiet among themselves; I never made any inquiry. I sold the father the property; he made an offer and I bought it before he died; that was the way he came to get into it. The papers were made up in Mr. Barker's office, I think.

Q. When Alexander, Sr., bought it?

A. When he died Alexander and the family was to take care of the estate. I don't think there was any will. I was very intimate with Mr. White; there was no bad feeling between me and the family. This was all done in good faith. Mr. White thought he was making money to take that stock. I gave a note for $20,000, and the stock was thought to be good, but it turned out to be a perfect bombshell.

Q. You mean the stock of the Protection Life?

A. Yes, sir.

Q. This property you bought for Alexander White——

A. This property I bought for Alexander White. As I told
417 this gentleman, I gave a quitclaim deed which was never recorded. They brought back the deed, the quitclaim, and urged me to give a mortgage on the property and take stock.

Q. Alexander did that?

A. Alexander. His mother and family were living in Brooklyn, New York, then; they had gone East. I did that like a fool and the whole thing went up. My wife has given me more curtain lectures about it than enough. I haven't made a cent out of them—not one; I haven't got my own.

Q. Alexander lost the whole of his investment, did he not?

A. Every dollar of it; but it was his uncle that lead me into it; he was the manager of it.

Q. That is the company you are referring to?

A. The company, certainly. Alexander lost every dollar of it.

Q. How much did Alexander lose by that transaction—how much money?

A. The land cost him $32,000. You take 80 acres of land at $400 an acre. He was offered $100 an acre, but he would not take it; he thought it was too near the city. The whole thing has gone up. That is the reason I have been trying to get him to redeem the land.

Q. I want to get the amount of money Alexander put in.

A. It was $32,000 the land came to. We got what was called a good bargain. It was an uncle of General Stayer; Stayer knew me so well he gave it to us at a good price.

S. LIND.

418 Complainant offered in evidence the record in the partition suit.

Petition for Partition.

Circuit Court of Cook County.

ANN WHITE, ELSIE WHITE, MARY S. WHITE, ANNIE C. WHITE, and JAMES B. WHITE

vs.

MARGARET WHITE and ALEXANDER WHITE, CHARLES W. COLEHOWER, and WILSON K. NIXON.

419 United States Circuit Court, Northern District of Illinois.

FREDERICK W. COTZHAUSEN *against* ALEXANDER WHITE, ELSIE WHITE, MARY S. White, Annie C. White, James B. White, Margaret White, and Ann White.	Gen. No. 17743. Gen. No. 17974.

EXHIBITS.

Record in Partition.

Circuit Court, Cook County.

ANN WHITE, ELSIE WHITE, MARY S. WHITE, ANNIE C. WHITE, and JAMES B. WHITE

vs.

MARGARET WHITE and ALEXANDER WHITE, CHARLES W. COLEHOUR, and WILSON K. NIXON.

Oct, 11, 1878.—Petition filed. Barker, Buell & Barker, complainants' solicitors. Petition is in ordinary form. Verified before Benj. F. Guyton Oct. 8, 1878.

Dec. 4, 1878.—Appearance of defendants entered. N. Fitch, defendants' solicitor.

Reference to Horatio L. Waite to take proofs, &c.

May 20, 1879.—Master's report filed and confirmed, and decree appointing commissioners as follows:

This day came the complainants, by their solicitors, and it appearing to the court here that all of the defendants herein, with the exception of Margaret White, entered their appearance herein on the fourth day of December, A. D. 1878, and it also appearing to the satisfaction of the court that a copy of the bill of complaint, together with a notice of the commencement of this suit, were delivered to the said defendant, Margaret White, at Litchfield, in the State of Connecticut, where she resides, on the fifteenth day of October, A. D. 1878. and the said defendant having been severally three times called in open court to plead, answer, or demur to said bill of complaint came not, but herein made default, it is ordered, adjudged, and decreed by the court that said bill be taken as confessed by each and all of said defendants.

And the court, having ordered that this cause be referred to Horatio L. Wait, one of the masters in chancery of this court, to take proof of the matters alleged in said bill and report the same to the court, and the said master having made his report, which is hereby approved and confirmed, and this cause coming on to be heard on the bill of complaint taken as confessed, together with the exhibits and testimony taken and reported to the court by the said master, and the court being fully advised in the premises, on consideration thereof, doth find—

That Alexander White departed this life intestate on the eighteenth day of March, A. D. 1872, at the city of Lake Forest, in the county of Lake and State of Illinois, leaving him surviving Ann White, his widow, and his six children, namely, Margaret
420 White, now about thirty-three years of age; Elsie White, now about thirty-one years of age; Mary S. White, now about twenty-six years of age; Annie C. White, now about twenty-three years of age, and James B. White, who came of age in December, A. D. 1877,

and Alexander White, now about twenty-nine years of age, as his only heirs at law.

That at the time of his death the said Alexander White, deceased. was possessed and seized by title in fee simple of the following-described real estate, all situated in the county of Cook and State of Illinois, to wit:

Sublots one (1) and five (5) of lots four (4) and five (5), in block thirty-two (32); sublot two (2) of lot four (4), in block thirty-three (33); lots one (1) and two (2) of sublot five (5) of lot four (4), in block thirty-three (33); sublots four (4) and five (5) of lots five (5) and west half of lot six (6), in block forty (40).

The west fifty-three (53) feet of lot two (2) and the east forty-seven (47) feet of lot three (3), in block fifty-six (56), in the original town of Chicago.

Also lots eighteen (18), nineteen (19), twenty-two (22), twenty-three (23), twenty-six (26), twenty-seven (27), thirty (30), thirty-one (31), thirty-four (34), thirty-five (35), thirty-eight (38), thirty-nine (39), forty-two (42), and forty-three (43), in blocks forty-six (46), forty-seven (47), and fifty-eight (58), in the canal trustees' subdivision of the west half of section twenty-seven (27), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian.

Also lots forty-nine (49), fifty (50), fifty-one (51), fifty-two (52), fifty-three (53), fifty-four (54), fifty-five (55), fifty-six (56), fifty-seven (57), fifty-eight (58), fifty-nine (59), and sixty (60), in block sixty-one (61), of the canal trustees' subdivision of section seven (7), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian.

Also lots ten (10) and eleven (11), in block two (2), in Ogden's addition to Chicago.

Also lots two hundred and twenty (220) and two hundred and twenty-one (221), in Greene's South Branch addition to Chicago.

The southeast quarter of the northeast quarter of section seventeen (17), township thirty-eight (38) north, of range fourteen (14) east, of the third principal meridian, situated in the town of Lake, Cook county, Illinois.

Also the southeast quarter of the southeast quarter of section twenty-seven (27), township forty (40) north, of range thirteen (13) east, of the third principal meridian, situate in the town of Jefferson, Cook county, Illinois.

Also the northeast quarter of section nineteen (19), township (35) north, of range thirteen (13) east, of the third principal meridian, situate in the town of Rich, Cook county, State of Illinois.

That at the time of his death the said Alexander White, deceased, was also seized in fee simple and possessed of the following-described real estate in the county of Lake and State of Illinois, to wit: Lots one hundred and seventy-one (171) and one hundred and seventy-two (172), in the city of Lake Forest.

That after the death of said Alexander White, deceased, and on or about the thirteenth day of May, A. D. 1876, pursuant to negotiations entered into between the said widow and heirs of the said Alexander White, deceased, and one Harvey M. Thompson, the said

lots numbered one hundred and seventy-one (171) and one hundred and seventy-two (172), in the city of Lake Forest last hereinbefore mentioned, were conveyed by the said widow and heirs of Alexander White, deceased, to said Harvey M. Thompson, and in exchange therefor the said Harvey M. Thompson conveyed to said Alexander White, the defendant in this cause, certain other property, such conveyance being made to said defendant, Alexander White, for
421 the convenience of the parties hereto, and he now and ever since such conveyance made to him as aforesaid holds and has held the same in trust for himself and the other heirs of the said Alexander White, deceased, hereinabove mentioned, which real estate so conveyed to him as aforesaid by said Thompson is described as follows, to wit:

Lots fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty (20), in block fourteen (14); lots eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), and thirty-one (31), in block fifteen (15); lots twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), and forty-five (45), in block sixteen (16), all in Adam Smith's subdivision of the south half ($\frac{1}{2}$) of the north half ($\frac{1}{2}$) of the southwest quarter and the southwest quarter of the southwest quarter of section thirty-six (36), in township 39 north, of range thirteen east, of the third principal meridian, in said Cook county, State of Illinois.

Also lots four (4) and five (5) of Hall and Thomas' subdivision of the north one hundred and twenty-five feet of block three (3), in David S. Lee's subdivision of the east half of the northwest quarter, north of the Barry Point road, in section thirteen (13), township thirty-nine (39) north, of range thirteen (13) east, of the third principal meridian, in said Cook county, Illinois.

Also lots numbered (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), and eleven (11), in H. M. Thompson's subdivision of lots twenty (20), twenty-one (21), twenty-two (22), and twenty-three (23), in block twenty-four (24) of Elston's addition to Chicago, in said Cook county, Illinois.

And the court doth further find that the said Alexander White, deceased, at the time of his death was the owner and possessed of one hundred shares of the capital stock of the corporation known as the Lake Forest Hotel and Manufacturing Company, which said shares of stock were, on the tenth day of March, A. D. 1875, exchanged by the said widow and heirs of the said Alexander White, deceased, for the following described land, to wit:

Lots two hundred (200), two hundred and two (202), two hundred and four (204), two hundred and five (205), two hundred and forty-four (244), two hundred and eighty (280), and three hundred and six (306), situate in the city of Lake Forest, in the county of Lake and State of Illinois, which real estate so received in exchange for said stock was, for the convenience of the said widow and heirs of the said Alexander White, deceased, conveyed by the said Lake Forest Hotel and Manufacturing Company to the said defendant,

Alexander White, who holds the legal title to the same in trust for himself, the widow, and the other heirs of the said Alexander White, deceased.

And the court further finds that the said Alexander White, deceased, in his lifetime made and executed a lease to and with Wilson K. Nixon, of Chicago, dated the first day of May, A. D. 1865, under and by which lease said Nixon acquired a leasehold interest, commencing on the day of the date of said lease and expiring on the first day of May, A. D. 1915, in that portion of the above-described property known and described as follows, to wit: The west fifty-three (53) feet of lot two (2), in block fifty-six (56), and the east forty-seven (47) feet of lot three (3), in block fifty-six (56), of the original town of Chicago.

That by virtue of a certain supplemental agreement or tripartite contract made and entered into between the said Alexander White, deceased, of the first part, the said Charles W. Colehour, of the second part, and said Wilson K. Nixon, of the third part, bearing date the first day of September, A. D. 1870, the said
422 Charles W. Colehour became a co-lessee jointly with said Wilson K. Nixon.

And the court further finds that in all that portion of the above-described real estate of which the said Alexander White, deceased, was seized and possessed of at the time of his death, as hereinbefore found (with the exception of the two lots numbered one hundred and seventy-one (171) and one hundred and seventy-two (172), in the city of Lake Forest, conveyed to Harvey M. Thompson as aforesaid, and the said leasehold interest of said Nixon and Colehour in said block fifty-six (56) and in all that portion of the above-described real estate acquired by exchange or otherwise since the death of said Alexander White, deceased, as hereinbefore found), no persons other than the said widow and heirs of the said Alexander White, deceased, have any title or interest, and that the interest and title of the said heirs in all that portion of the above-described real estate of which the said Alexander White died seized, with the exception hereinabove named, and in all that portion of said real estate received or acquired from Harvey M. Thompson in exchange for other real estate conveyed to him, is a title in fee simple absolute, subject only to the dower right of the said widow, Ann White, therein, and that the proportionate share of each of the said heirs therein is to each an equal one-sixth part thereof.

And the court doth further find that the said widow and heirs are equitably and legally entitled to all that portion of the above-described real estate which was conveyed to said defendant, Alexander White, in exchange for said one hundred shares of the capital stock of the Lake Forest Hotel and Manufacturing Company, and that the respective interests and shares of the said widow and heirs in the same is as follows: To the said widow, Ann White, a one-third part and to each of the said heirs a one-ninth part thereof in fee.

The court doth therefore order, adjudge, and decree that the said complainant, Ann White, widow of the said Alexander White, de-

ceased, be endowed of a one-third part, and that the said heirs, viz., Elsie White, Mary S. White, Annie C. White, James B. White, Margaret White, and Alexander White, are each entitled to a one-sixth part in fee simple, subject to said dower, in all the following-described real estate situate in the city of Chicago, in the county of Cook and State of Illinois, to wit:

Sublots one (1) and five (5) of lots four (4) and five (5), in block thirty-two; sublot two of lot four, in block thirty-three (33); lots one (1) and two (2) of sublot five (5) of lot four (4), in block thirty-three (33).

Sublots four (4) and five (5) of lots five (5) and west half of lot six (6), in block forty (40).

The west fifty-three (53) feet of lot two (2) and the east forty-seven (47) feet of lot three (3), in block fifty-six (56), in the original town of Chicago, subject to the leasehold rights of Charles W. Colehour and Wilson K. Nixon therein, as hereinbefore found.

Lots eighteen (18), nineteen (19), twenty-two (22), twenty-three (23), twenty-six (26), twenty-seven (27), thirty (30), thirty-one (31), thirty-four (34), thirty-five (35), thirty-eight (38), thirty-nine (39), forty-two (42), and forty-three (43), in blocks forty-six (46), forty-seven (47), and fifty-eight (58), in the canal trustees' subdivision of the west half of section twenty-seven (27), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian.

Lots forty-nine (49), fifty (50), fifty-one (51), fifty-two (52), fifty-three (53), fifty-four (54), fifty-five (55), fifty-six (56), fifty-seven (57), fifty-eight (58), fifty-nine (59), and sixty (60), in block sixty-one (61) of the canal trustees' subdivision of section seven (7), in township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian.

Lots ten (10) and eleven (11), in block two (2), in Ogden's addition to Chicago.

423 Also lots two hundred and twenty (220) and two hundred and twenty-one (221), in Greene's South Branch addition to Chicago.

The southeast quarter of the northeast quarter of section seventeen (17), township thirty-eight (38) north, of range fourteen (14) east, of the third principal meridian, situate in the town of Lake, Cook county, Illinois.

Also the southeast quarter of the southeast quarter of section twenty-seven (27), township forty (40) north, of range thirteen (13) east, of the third principal meridian, situate in the town of Jefferson, Cook county, Illinois.

Also the northeast quarter of section nineteen (19), township thirty-five (35) north, of range thirteen (13) east, of the third principal meridian, situate in the town of Rich, Cook county, Illinois.

Also lots fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty (20), in block fourteen (14); lots eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine 29, thirty (30), and thirty-one (31), in block fifteen (15); lots twenty-eight (28), twenty-nine (29), thirty

(30), thirty-one (31), and forty-five (45), in block sixteen (16), all in Adam Smith's subdivision of the south half of the north half of the southwest quarter and the southwest quarter of the southwest quarter of section thirty-six (36), township thirty-nine (39) north, of range thirteen (13) east, of the third principal meridian, in said Cook county, Illinois.

Also lots four (4) and five (5) of Hall and Thomas' subdivision of the north one hundred and twenty-five (125) feet of block three (3), in David S. Lee's subdivision of the east half of the northwest quarter, north of Barry Point road, in section thirteen (13), township thirty-nine (39) north, of range thirteen (13) east, of the third principal meridian, in said Cook county, Illinois.

Also lots numbered three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), and eleven (11), in H. M. Thompson's subdivision of lots twenty (20), twenty-one (21), twenty-two (22), and twenty-three (23), in block twenty-four (24) of Elston's addition to Chicago, in said Cook county, Illinois.

And the court doth order, adjudge, and decree that the said Ann White, widow of the said Alexander White, deceased, as aforesaid, recover her dower in all the said above-described premises in which she is entitled to dower as hereinbefore found, and that after the assignment of said dower that a division and partition of the remainder of said described premises — between the said children and heirs of said Alexander White, deceased, viz., Margaret White, Alexander White, Elsie White, Mary S. White, Annie C. White, and James B. White, in accordance with their respective interests as hereinbefore found, being to each a one-sixth share and proportion.

And the court doth further order, adjudge, and decree that the said widow, Ann White, is entitled to a one-third part in fee simple in the following hereinbefore-described land, namely, lots two hundred (200), two hundred and two (202), two hundred and four (204), two hundred and five (205), two hundred and forty-four (244), two hundred and eighty (280), and three hundred and six (306), situate in the city of Lake Forest, county of Lake and State of Illinois, being the same premises for which the said capital stock was exchanged as aforesaid.

And the court doth also order, adjudge, and decree that the said children and heirs of the said Alexander White, deceased, are entitled each to a one-ninth share and proportion of the land last above described, and that division and partition be made of the same between the widow and children in accordance with their respective interests therein as herein found and decreed.

424 That Henry C. Morey, George M. Bogue, and William D. Kerfoot, neither of whom appear to be connected with any of said parties either by consanguinity or affinity, and who are entirely disinterested, be, and they are hereby, appointed commissioners to assign unto said Ann White her dower in all that portion of the above-described premises in which she is found by this decree to be entitled to dower.

And that they make partition and division of all said above-described premises (after the assignment of said dower) among the said

heirs of Alexander White, deceased, and Ann White, giving to each their respective proportion and share thereof as found and determined in this decree.

Each of said commissioners shall take and subscribe an oath or affirmation, as prescribed by law, and go upon and view said premises, and in assigning said dower and in making said division and partition they may do the same by metes and bounds, if they find the same can be done consistently with the interests of said parties in interest, and they may assign and set off said dower and allot and partition any of the respective shares and proportions of said parties in a body or out of two or more of said tracts of land, as they may deem best for all the said parties in interest, the quantity, quality, and respective values of said several pieces of land being at all times considered, and said commissioners may employ one or more surveyors with necessary assistance to aid them; and if said commissioners shall find that said premises are so situated that dower cannot be assigned, and that the same are not susceptible of partition and division without manifest prejudice to the parties in interest, they will fairly and impartially appraise the value of each piece or parcel of said premises, and a true report make, under their hands and seals, to this court, during the present or the next term thereof.

July 16, 1879.—Commissioners' report filed and confirmed. Decree of partition.

425 And thereupon, to wit, on the 16th day of July, A. D. 1879, there was filed in said cause a certain commissioners' report in words and figures following, to wit:

Petition for Partition.

STATE OF ILLINOIS, } ss:
Cook County, }

In the Circuit Court of Cook County.

ANN WHITE, ELSIE WHITE, MARY S. WHITE, ANNIE C. WHITE, and JAMES B. WHITE

vs.

MARGARET WHITE, ALEXANDER WHITE, CHARLES W. COLEHOUR, and WILSON K. NIXON.

Henry C. Morey, George M. Bogue, and William D. Kerfoot, commissioners appointed by the decree of said court in said above-entitled cause to make partition of the premises described in the petition in said cause, being duly sworn, depose and say that they will fairly and impartially make partition of the premises described in the decree appointing them such commissioners in said cause according to the rights and interests of the parties as declared by the judgment of the said court, if the same can be done consistently with the in-

terests of the parties, or, if the same cannot be divided without
426 manifest prejudice to the parties in interest, that they will fairly and impartially appraise the value of each piece or parcel of the premises sought to be divided, and a true report make to the court of what they have done; that they are not connected to any of said parties either by the ties of affinity or consanguinity.

HENRY C. MOREY.
GEO. M. BOGUE.
WILLIAM D. KERFOOT.

Subscribed and sworn to before me this thirty-first day of May, A. D. 1879.

HORATIO L. WAIT,
Master in Chancery of the Circuit Court of Cook County, Illinois.

Proceedings in Partition.

Circuit Court of Cook County, of the June Term, A. D. 1879.

ANN WHITE, ELSIE WHITE, MARY S. WHITE, ANNIE C. WHITE, & JAMES B. WHITE
vs.
MARGARET WHITE, ALEXANDER WHITE, CHARLES W. COLEHOUR, & WILSON K. NIXON.

427 To the honorable judges of the circuit court of the county of Cook, in the State of Illinois:

In pursuance of a decree entered in the above-entitled cause on the twentieth day of May, A. D. 1879, we, the commissioners therein named, respectfully report to the court that, after each of us having taken and subscribed an oath fairly and impartially to make partition of the premises mentioned in the said decree according to the rights and interests of the parties as declared therein by the judgment of the court, if the same could be done consistently with the interest of the parties, or, if the same could not be so divided without manifest prejudice to the parties in interest, that we would fairly and impartially appraise the value of each piece or parcel of the premises sought to be divided, and a true report make to the court, which said oath is hereto attached, we went upon the premises described in said decree, situate in the county of Cook and State of Illinois, to wit: Sublots one (1) and five (5) of lots four (4) and five (5), in block thirty-two (32).

Sublot two (2) of lot four (4), in block thirty-three (33); lots one (1) and two (2) of sublot five (5) of lot four (4), in block thirty-three (33).

Sublots four (4) and five (5) of lots five (5) and west half of lot six (6), in block forty (40).

The west fifty-three (53) feet of lot two (2) and the east forty-
428 seven (47) feet of lot three (3), in block fifty-six (56), all in the original town of Chicago.

Also lots eighteen (18), nineteen (19), twenty-two (22), twenty-three (23), twenty-six (26), twenty-seven (27), thirty (30), thirty-one (31), thirty-four (34), thirty-five (35), thirty-eight (38), thirty-nine (39), forty-two (42), and forty-three (43), in blocks forty-six (46), forty-seven (47), and fifty-eight (58), in the canal trustees' subdivision of the west half of section twenty-seven (27), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian.

Also lots forty-nine (49), fifty (50), fifty-one (51), fifty-two (52), fifty-three (53), fifty-four (54), fifty-five (55), fifty-six (56), fifty-seven (57), fifty-eight (58), fifty-nine (59), and sixty (60), in block sixty-one (61) of the canal trustees' subdivision of section seven (7), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian.

Also lots ten (10) and eleven (11), in block two (2), in Ogden's addition to Chicago.

Also lots two hundred and twenty (220) and two hundred and twenty-one (221), in Greene's South Branch addition to Chicago.

The southeast quarter of the northeast quarter of section seventeen (17), township thirty-eight (38) north, of range fourteen (14) east, of the third (3rd) principal meridian, situate in the town of Lake, Cook county, Illinois.

Also the southeast quarter of the southeast quarter of sec-
429 tion twenty-seven (27), township forty (40) north, of range thirteen (13) east, of the third principal meridian, situate in the town of Jefferson, Cook county, Illinois.

Also the northeast quarter of section nineteen (19), township thirty-five (35) north, of range thirteen (13) east, of the third principal meridian, situate in the town of Rich, Cook county, Illinois.

Also lots fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty (20), in block fourteen (14); lots eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), and thirty-one (31), in block fifteen (15); lots twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), and forty-five (45), in block sixteen (16), all in Adam Smith's subdivision of the south half ($\frac{1}{2}$) of the north half ($\frac{1}{2}$) of the southwest quarter and the southwest quarter of the southwest quarter of section thirty-six (36), in township thirty-nine (39) north, of range thirteen (13) east, of the third principal meridian, in said Cook county and State of Illinois.

Also lots four (4) and five (5) of Hall and Thomas' subdivision of the north one hundred and twenty-five feet of block three (3), in David S. Lee's subdivision, north of the Barry Point road, of section thirteen, township thirty-nine (39) north, of range thirteen (13) east, of the third principal meridian.

430 Also lots three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), and eleven, in H. M. Thompson's subdivision of lots twenty (20), twenty-one (21), twenty-two (22), and twenty-three (23), in block twenty-four (24), in Elston's addition to Chicago, in said Cook county.

Also the following-described premises, situate in the county of Lake, in the State of Illinois, to wit: Lots two hundred (200), two hundred and two (202), two hundred and four (204), two hundred and five (205), two hundred and forty-four (244), two hundred and eighty (280), and three hundred and six (306), in the city of Lake Forest.

And thereupon your commissioners, in compliance with said decree, assigned to the said Ann White her dower in all that portion of said premises in which by the said decree she was adjudged entitled to dower, and then made partition of all the above-described premises, including the premises in which such dower was assigned, but subject thereto among the said parties in interest, assigning and allotting to them their several shares, quantity and quality relatively considered, according to their respective rights and interests as found and declared by the judgment of the court in and by said decree—that is to say, we assigned, allotted, and set off to the said Ann White for her said dower the following of the above-described premises, to wit:

431 Sublots four (4), five (5), of lots five (5), and west half of lot six (6), in block forty (40), in the original town of Chicago.

Also lots forty-nine (49), fifty (50), fifty-one (51), fifty-two (52), fifty-three (53), fifty-four (54), fifty-five (55), fifty-six (56), fifty-seven (57), fifty-eight (58), fifty-nine (59), and sixty, in block sixty-one (61), of the canal trustees' subdivision of section seven (7), township thirty-nine (39) north, of range fourteen (14) east, of the third principal meridian.

Also lots two hundred and twenty (220) and two hundred and twenty-one (221), in Greene's South Branch addition to Chicago.

Also the southeast quarter of the northeast quarter of section seventeen (17), township thirty-eight (38) north, range fourteen (14) east, of the third principal meridian.

Also lots fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty (20), in block fourteen (14); lots eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), & thirty-one (31), in block fifteen (15); lots twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), and forty-five (45), of block sixteen (16), all in Adam Smith's subdivision of the south half of the north half of the southwest quarter and the southwest quarter of the southwest quarter of section thirty-six (36), in township thirty-nine (39) north, of range thirteen (13) east, of the third principal meridian.

And we also assigned, set off, and allotted to the said Ann
432 White, to be held by her absolutely and in fee as her share and just proportion of the above-described land, situate in Lake county, in the State of Illinois, the following, to wit: Lots two hundred and four (204), two hundred and five (205), and two hundred and forty-four (244), in the city of Lake Forest, in the county of Lake and State of Illinois.

And we set off and allotted to the said Margaret White in severalty for her interest and share in all the above-described premises,

being a one-sixth part of all that portion of the land situate in said county of Cook and a one-ninth part of all that portion of the same situate in said county of Lake, the following, to wit:

The north twenty acres of the southeast quarter of the northeast quarter of section seventeen, in township thirty-eight (38) north, of range fourteen (14) east, of the third principal meridian.

Also lots two hundred and twenty (220) and two hundred and twenty-one (221), in Greene's South Branch addition to Chicago, all subject to the dower right therein of the said Ann White, hereinbefore assigned and allotted to her.

Also lots four (4) and five (5) of Hall and Thomas' subdivision of the north one hundred and twenty-five feet (125) of block three (3), in David S. Lee's subdivision of the east one-half (½) of the northwest quarter (¼), north of the Barry Point road, in section
433 thirteen (13), township thirty-nine (39) north, range thirteen (13) east, of the third principal meridian.

Also sublots one (1) and five (5) of lots four (4) and five (5), in block thirty-two (32), in the original town of Chicago.

And we allotted and set off to the said Alexander White in severalty for his interest and share in all of the above-described premises, being a one-sixth (⅙) part of all that portion of the same situate in said county of Cook and a one-ninth part of all that portion of the same situate in said county of Lake, the following, to wit:

The north ten (10) acres of the south twenty acres of the southeast quarter of the northeast quarter (¼) of section seventeen (17), in township thirty-eight (38) north, of range fourteen (14) east, of the third principal meridian.

Also lots fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty (20), in block fourteen (14); lots eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), and forty-five (45) of block sixteen (16), in Adam Smith's subdivision of the south half (½) of the north half (½) of the southwest quarter (¼) and the southwest quarter (¼) of section thirty-six (36), in township thirty-nine (39) north, of range thirteen (13) east, of the third principal meridian.

Also lots forty-nine (49), fifty (50), fifty-one (51), fifty-two
434 (52), fifty-three (53), and the east eight (8) feet of lot fifty-four (54), in block sixty-one (61) of the canal trustees' subdivision of section seven (7), in township thirty-nine (39) north, of range fourteen (14) east, of the third principal meridian, all subject to the dower right therein of the said Ann White, hereinbefore allotted and assigned to her.

Also sublot two (2) of lot four (4), in block thirty-three (33), in the original town of Chicago.

Also lots one (1) and two (2) of sublot five (5) of lot four (4), in block thirty-three (33), in the original town of Chicago.

Also the south seventeen (17) feet of lot twenty-seven (27), lots thirty (30), thirty-one (31), thirty-four (34), thirty-five (35), thirty-eight (38), thirty-nine (39), forty-two (42), and forty-three (43), in

block- forty-six (46), forty-seven (47), and fifty-eight (58), in the canal trustees' subdivision of the west half ($\frac{1}{2}$) of section twenty-seven (27), in township thirty-nine (39) north, of range fourteen east, of the third principal meridian.

Also lots three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), and eleven (11), in H. M. Thompson's subdivision of lots twenty (20), twenty-one (21), twenty-two (22), and twenty-three (23), in block twenty-four (24), of Elston's addition to Chicago.

Also lots two hundred (200), two hundred and two (202), two hundred and eighty (280), and three hundred & six (306), in the city of Lake Forest, in the county of Lake and State of Illinois.

And we assigned, allotted, and set off to the said Elsie White, Mary S. White, Annie C. White, and James B. White, as their
435 interest and share in all the above-described premises, being a four-sixth ($\frac{4}{6}$) part of all that portion of the same situate in said county of Cook and a four-ninth ($\frac{4}{9}$) part of all that portion of the same situate in said Lake county, to be held and owned by them in common, as we are informed it is their choice and election to do, the following, to wit:

Sublots four (4) and five (5) of lot five (5) and west half ($\frac{1}{2}$) of lot six (6), in block forty (40), in the original town of Chicago.

Also the west seventeen (17) feet of lot fifty-four (54), lots fifty-five (55), fifty-six (56), fifty-seven (57), fifty-eight (58), fifty-nine (59), and sixty (60) of block sixty-one (61) of the canal trustees' subdivision of section seven (7), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian.

Also the south ten (10) acres of the south quarter ($\frac{1}{4}$) of the north-east quarter ($\frac{1}{4}$) of section seventeen (17), in township thirty-eight (38) north, of range fourteen (14) east, of the third principal meridian, all subject to the dower right therein of the said Ann White, hereinbefore allotted and assigned to her.

Also the west fifty-three (53) feet of lot two (2) and the east forty-seven (47) feet of lot three (3), in block fifty-six (56), in the original town of Chicago.

Also lots eighteen (18), nineteen (19), twenty-two (22), twenty-three (23), twenty-six (26), and the north seven (7) feet of lot
436 twenty-seven (27), in blocks forty-six (46), forty-seven (47), and fifty-eight (58), in the canal trustees' subdivision of the west half of section twenty-seven (27), township thirty-nine (39) north, of *the* range fourteen east, of the third principal meridian.

Also lots ten (10) and eleven (11), in block two (2), in Ogden's addition to Chicago.

Also the southeast quarter ($\frac{1}{4}$) of the southeast quarter ($\frac{1}{4}$) of section twenty-seven (27), township forty (40) north, of range thirteen (13) east, of the third principal meridian, situate in the town of Jefferson.

Also the northeast quarter of section nineteen (19), in township thirty-five (35) north, of range thirteen (13) east, of the third principal meridian.

And we would further report that the items of the various expenses attending the execution of said decree, including our fees,

are contained in a schedule hereto annexed, marked Schedule "A," and forming a part of our report.

All of which is respectfully submitted for the approval of the court.

In witness whereof we, the said commissioners, have set our hands and seals to this our report this sixteenth day of July, in the year 1879.

H. C. MOREY. [SEAL.]
GEO. M. BOGUE. [SEAL.]
WILLIAM D. KERFOOT. [SEAL.]

437 SCHEDULE A, Referred to in the Foregoing Report.

Ann White *et al.* in ac. with Geo. M. Bogue, W. D. Kerfoot, H. C. Morey, Dr.

For thirty-five days' service each as commissioners in partitioning the property described in said report, $2.00 per day.

H. C. MOREY.
GEO. M. BOGUE.
WILLIAM D. KERFOOT.

And thereupon, on the 16th day of July, A. D. 1879, there was entered of record in said cause a certain decree in the words and figures following, to wit:

Proceedings in Partition.

ANN WHITE, ELSIE WHITE, MARY S. WHITE, ANNIE C. WHITE, and JAMES B. WHITE
vs.
MARGARET WHITE, ALEXANDER WHITE, CHARLES W. COLEHOUR, and WILLIAM K. NIXON. } 2394, 29937.

438 This day came Henry C. Morey, George M. Bogue, and William D. Kerfoot, commissioners appointed by the court to make partition of the lands mentioned and described in a former decree, entered in the above-entitled cause between the parties thereto and to assign to the said Ann White her dower in certain portions thereof to which she was found to be entitled by said decree, and made their report of their proceedings and that they had made assignment of said dower, and thereafter had made a division and partition of all said lands among the parties in interest, in pursuance of said decree, by giving, allotting, and setting off to said Ann White her dower and to her and to the said Margaret White and Alexander White their respective shares and proportions of said premises, to be taken, held, and owned by them in severalty, and by giving, allotting, and setting off to the said Elsie White, Mary S. White, Annie C. White, and James B. White their joint share, part, and proportion of said premises, to be held and owned by them in common.

And the court, having examined said report, doth find that the said commissioners have in every respect proceeded according to law and in accordance with the judgment of the court in said decree declared, and that said assignment of dower and said partition and division was fairly, impartially, and lawfully made, and no objections or objection being made by any of the parties herein thereto.

439 And the court, being fully advised in the premises, doth order, adjudge, and decree that the proceedings, partition, and report of the said commissioners be, and the same are hereby, approved and confirmed, and that the said Ann White take, hold, and enjoy, as and for her said dower, the specific lands and parcels of land which were set off and assigned to her by said commissioners for that purpose in their said report.

And that she be endowed with the same, and that she take, hold, and possess the other lands set off and allotted to her absolutely and in fee.

And that the said Margaret White and Alexander White take, hold, and possess in severalty, as and for their respective shares and portions of said premises, the specific lands and parcels of land set off, allotted, and assigned to each of them, respectively, by said commissioners in and by their said report.

And that the said Elsie White, Mary S. White, Annie C. White, and James B. White take, hold, and possess, equally and in common, as and for their entire share and portion of said premises, the specific lands and parcels of land which were set off, allotted, and assigned to them in said report by said commissioners.

And that the title to the said respective pieces and parcels of land set off, allotted, and assigned by said commissioners in and

440 by their said report is hereby vested in the said parties, respectively, to whom, whether separately or jointly, they were so set off, allotted, or assigned according to the true intent and meaning of said report.

And it is further ordered that the said report of said commissioners be spread at large upon the records of this court.

And it is further ordered that the costs and expenses of this proceeding, including the solicitors' fees of the attorneys for the petitioners, which are hereby fixed at fifteen hundred dollars, be paid by the said parties, Ann White, Margaret White, Alexander White, Elsie White, Mary S. White, Annie C. White, and James B. White, in equal proportions, and that the same be paid within sixty days from this date.

Also complainant offered the record of the probate court of Lake county, Illinois, in the matter of the estate of Alexander White, deceased.

441 *Abstract of Probate Record.*

In the Matter of the Final Settlement of ALEXANDER WHITE, Administrator, &c.

July 17, 1872.—Inventory filed.
Real estate (see files).
Residence property (see files).

Cash on hand at time of decease	$37,687 25
Asa D. Reed, note	61,000 00
Caroline E. Couch, note	30,100 00
Tuley & Barker, 3 notes	2,700 00

July 22, 1879.—Administrator's final report filed.

Annual Statement.

STATE OF ILLINOIS, *Lake County:*

To the honorable the judge of the court of Lake county:

The undersigned, administrator of the estate of Alexander White, deceased, respectfully submits to the court the following report of his acts and doings as such administrator from the date of his appointment, April 9, 1872, to July 21, 1879:

April 9, 1872.	To cash on hand		$41,820 37
	" personal property, as per appraisement bill		10,532 00
	" cash received on notes of A. D. Reed		61,000 00
	" " interest on same		8,512 88
	" " received on notes Caroline Couch		30,100 00
	" " interest on same		4,282 65
	" " note of Barker & Tuley		2,700 00
	" " interest on same		819 60
	" " on note of Mutual Life Ins. Co.		32,000 00
	" " interest on same		4,234 19
	" " of the Chicago, M. & St. Paul R. R. condemnation		2,600 00
	" " received from sale of personal property		707 00
	" " received for painting, Standard-Bearer		866 88
	" " received for painting, Fruit Piece		1,000 00
	" " received for painting, Patent Front & Cruel		1,703 05
	" " received, for painting, Storm at Sea		1,200 00
	" " received for cow, calf, and pig		54 82
			$204,133 44

April 9, 1872.	To amount carried forward----		204,133 44
	Credit.		
	By personal property taken by widow----------	10,532 00	
	" cash expended by order of widow & heirs in building 83, 85, & 87 Fifth avenue ----	64,178 12	
	By cash expended by order of widow & heirs in building up 215 & 217 Lake St. and 39 & 41 Franklin St.---	38,777 27	
			114,487 39
	To balance in hands of adm'r-------		89,646 05
	" interest on $89,646.05, January 21, 1875, to July 21, 1879, 4½ years' interest at 10 per cent. by virtue of the statute ----------		40,123 80
July 21, '79.	To balance in hands of administrator,		$129,769 85

The foregoing is a full, true, and perfect account of all money and property that has passed through my hands or came to my
442 possession or knowledge as administrator of the estate of Alexander White, deceased, except some property which I have turned over to the heirs.

ALEXANDER WHITE,
Administrator.

STATE OF ILLINOIS, *Lake County:*

County Court of Lake County.

To the judge of the county court of Lake county:

And now comes Alexander White, administrator of the estate of Alexander White, deceased, and makes this his report of his actings and doings as such administrator: That he has collected all the money due the estate and from personal property so far as the same has been sold; that he has not sold any of the paintings mentioned, except those named in the account filed herewith; that he has turned over the paintings not sold as above to the heirs and legal representatives of Alexander White; that he has the balance in said account, $129,769.85, which should be charged him as being in his hands and which has been in his hands since it was collected, and that the charge for interest, $40,123.80 is a proper charge in said account, and prays that the said account may be allowed and that an order of distribution may be entered in said estate.

ALEXANDER WHITE,
Administrator.

STATE OF ILLINOIS, } ss:
Lake County, }

Alexander White, being duly sworn, deposes and says that the foregoing report is true, and that the account accompanying the same is correct.

ALEX. WHITE,
Administrator.

Subscribed and sworn to before me this 18th day of July, A. D. 1879.

[NOTARIAL SEAL.] JOSEPH N. BARKER,
Notary Public.

In the County Court of Lake County, *ss.*

To Ann White, widow of Alexander White, deceased, and Elsie White, James B. White, Margaret White, Mary S. White, and Annie C. White, heirs of Alexander White, deceased:

Take notice that the undersigned, administrator of the estate of Alexander White, deceased, will, on 22nd day of July, A. D. 1879, present his final settlement as such administrator to said court for approval, and pray an order for the distribution of the money remaining in his hands after payment of the debts of said estate and costs of administration, when and where you may appear and object to said settlement if you see fit.

July 1st, 1879.

ALEXANDER WHITE,
Administrator.

STATE OF ILLINOIS, } ss:
Cook County, }

Alexander White, being duly sworn, deposes and says that he delivered a copy of the foregoing notice to each of said parties on the second day of July, A. D. 1879.

ALEXANDER WHITE.

Subscribed and sworn to before me this 18th day of July, A. D. 1879.

[NOTARIAL SEAL.] JOSEPH N. BARKER,
Notary Public.

443 In the County Court of Lake County, Illinois.

In the Matter of the Estate of ALEXANDER WHITE, Deceased.

And now come Ann White, widow, and Elsie White, Margaret White, James B. White, Mary S. White, and Annie C. White, heirs of Alexander White, deceased, and enter our appearance and consent to the approval of the account of Alexander White, administrator of said estate, to be filed in said court, which account shows a balance of $129,769.85 in his hands for distribution; that we be-

lieve the same to be correct, and ask for an order of distribution; that the remainder of the personal property not in said account has been distributed.

ANN WHITE, *Widow*,
ELSIE WHITE,
JAMES B. WHITE,
ANNIE C. WHITE,
MARGARET WHITE,
MARY S. WHITE, *Heirs*,
By BARKER & BUELL,
Their Attorneys.

Received from Alexander White, administrator of the estate of Alexander White, deceased, all our share of all the personal property belonging to the estate of Alexander White, deceased, not accounted for in his account filed herewith, consisting of paintings and personal property on hand at the date of the death of Alexander White.

July 18, 1879.

ANN WHITE,
ELSIE WHITE,
JAMES B. WHITE,
ANNIE C. WHITE,
MARGARET WHITE,
MARY S. WHITE,
By BARKER & BUELL,
Their Att'ys.

In presence of—
J. N. BARKER.

Decree.

In the Matter of the Final Settlement of ALEXANDER WHITE, administrator of the estate of Alexander White, deceased, and the distribution of the moneys remaining in his hand among the widow and heirs.

JULY 22, 1879.

And now comes Alexander White, administrator of the estate of Alexander White, deceased, and shows to the satisfaction of the court that he has given notice to the widow and to all the heirs-at-law of the said Alexander White, in the manner prescribed heretofore by the court, that he would, on the 22 day of July, A. D. 1879 (which day is one of the days of the July term of this court), present his final settlement, showing that all the assets of said estate have been collected and all the debts of said estate which were filed in the office of the clerk of this court within two years after the date of his letters of administration have been established and have been paid by him, and that he has no personal property in his hands as such administrator, except money that he has remaining in his hands for distribution among the widow and heirs of the said Alex-

ander White, the sum of one hundred and twenty-nine thousand seven hundred and sixty-nine dollars and eighty-five cents ($129,769.85).

444 And upon examination thereof, the same appearing in all respects correct and the said widow and all the said heirs appearing and consenting to said settlement and approving of the statement of the accounts of said administrator as presented to the court and admitting that the same and the report of said administrator this day filed to be in all respects correct, it is ordered by the court that said settlement and report stand approved.

And it having been made to appear to the court that the widow of said Alexander White, deceased, and Elsie White, James B. White, Annie C. White, Margaret White, Mary S. White, and Alex- White, children of the said Alexander White, deceased, are the only heirs and distributees of the said Alexander White and of his estate, it is further ordered that the said money be distributed and paid to the said widow and children as follows: to the said widow the sum of forty-three thousand two hundred and fifty-six dollars and sixty-one cents, and to each of said children the sum of fourteen thousand four hundred and eighteen dollars and eighty-seven cents, upon the giving to him by each of said distributees of a bond, with good and sufficient security, to refund the due proportion of any debt which may thereafter appear against said estate and the costs attending the recovery thereof if the said administrator requires such bond and security, and that said administrator file such bond if taken in this court and make report of his proceedings in this behalf to this court.

Complainant then introduced his exhibits numbered from one (1) to thirty-nine (39) and an exhibit No. —.

1 EXHIBIT.

Telegram (*Page* 4).

"NEW YORK, *April* 15, 1878.

"To B. F. Guyton:

"Letters just received. Do not give up the ship. We must arrange in some way; will arrive this week.

"WILLIAM MURPHY."

2 EXHIBIT.

Telegram (*Page* 4).

"BUFFALO, *April* 23, 1878.

"To B. F. Guyton:

"Can you hold the fort till May; arrive some time this week.

"A. WHITE."

3 EXHIBIT.

Letter (*Page* 5).

"CHICAGO, *Feb.* 4, 1878.

"To B. F. Guyton:

"Yours of 2nd rec'd accepting my terms for the rental of the building, together with notes enclosed. I return the same with my guarantee and hope the Milwaukee party will agree in writing not to negotiate the same, as I am exceedingly particular and sensitive in regard to the matter.

"You desire references as to my financial standing, of course. I am generally well known in the city, but particularly I might refer you to the following parties, with whom I have had more or less busines relations: Joseph O. Rutter, pres't Traders' Nat. Bank; Joseph N. Barker, firm of Barker, Buell & Barker; Elliott Anthony, attorney, former corporation counsel; Edwin Walker, attorney; Monroe Heath, present mayor; Charles L. Rice, merchant.

"Several of the above are well known in Milwaukee. Mr. Rice, machinery supplies; Mr. Walker, connected with M. & St.
445 Paul road, and Mr. Rutter; the two latter are known I believe to Mr. Alexander Mitchell. The above names just come to my mind, and if not sufficient would be pleased to furnish others.

"ALEXANDER WHITE."

4 EXHIBIT.

Bank Book (*Page* 19).

Importers' & Traders' National Bank in acc't with Alex. White, administrator. (Opened April 20, 1872; closed March 6, 1873.)

5 EXHIBIT.

Bank Book (*Page* 19).

Traders' National Bank in acc't with Alex. White, administrator. (Opened May 6, 1872; closed November, 1877.)

6 EXHIBIT.

List of Checks (*Page* 19).

7 EXHIBIT.

Statement of Account (*Page* 75).

Lake Forest Hotel & Man'f'g Company. Loans and assessments on stock. Credits.

8 EXHIBIT.

Statement of Account (*Page* 94).

Alex. White in acc't with American Oleograph Co.

9 EXHIBIT.

Statement of Account (*Page* 94).

Copy of Alex. White's account with the estate as appearing on his own ledger, on pages 52–55, and said to have been made up by himself and Driesslein between Oct., 1878, and spring of 1879 from checks, memoranda, &c.

Balance of debits over credits May 14, 1879, $83,400.38.

Increased by subsequent corrections and additions to $86,462.45.

10 EXHIBIT.

Telegram (*Page* 95).

"NEW YORK, *April* 18, 1878.

"To B. F. Guyton:

"Two hundred will be sent to-morrow; arrive Chicago first next week.

"W. MURPHY."

11 EXHIBIT.

Telegram (*Page* 95).

"NEW YORK, *March* 16, 1878.

"To B. F. Guyton:

"Send three three-M oleograph company's notes; also two five-M of yours—all in blank.

"A. WHITE."

(Respectfully declined.—B. F. GUYTON.)

12 EXHIBIT.

Letter (*Page* 95).

White to Guyton.

"MARCH 22, 1878.

Your two of 13th, of 15th, with trial balance of 18th, with three blank notes and two five-thousand notes, and of 19th, with Palmer House plate, package of litho's of Pope, all duly rec'd. I am greatly obliged for enquiries about loan of Spring's man. Nothing new about presses yet; no answer to advertisement in last Sunday's N. Y. Herald; will see Welcke soon. Look out for N. Y. orders; can't be too careful in examining responsibility, &c. I will not call on the N. Y. Jew about Pope's litho. What's your price for his

litho., as I may be able to sell some? I would scarcely recommend Norgen, of Chicago, for selling chromos—too slow and unbusiness-like, I fear. No need of forwarding me lawyer's opinion;
446 just keep it with your papers. Ascertain manner of increasing stock in writing, all opinions to be approved by Cotzhausen.

Your explanations and reasons for not sending Co.'s notes entirely correct and satisfactory.

Please ascertain of different parties the price of both boiler & engine set up in building complete; also of each set up separately. The Ames & Erie boilers and engines have the poorest reputation of nearly all. Better always to buy the very best, tho' it may cost more at first. I called C. T. B.'s attention to your letters in reference to the money matters and he will attend to it as soon as possible. He is very busy about other matters, but I keep reminding him constantly. I hope and expect to see all will be well soon; will do what I can."

13 EXHIBIT.

Letter (*Page* 95).

White to Guyton.

"THURSDAY (no date).

Try all ways about engine and boiler so as to have everything ready to act upon my return. Figure on engine and boiler separately, as I think I can get an engine from Rice to apply on my acc't, you know; say nothing, tho', to any one." "Will not Crane Bros. put in elevator or elevators for lithographic work? Kerting used to say so, you know, and you ought to do as well as Kerting. Crane Bros. are very high-priced people; so look out. Perhaps better pay cash than work if too high. I have of my own some elevator machinery on hand. Now, don't put in two unless absolutely necessary. You & Thurber can come down and examine building and put in at once the elevator part. Rice will show you my machinery in 215 Lake St., upstairs, 3rd or 4th floor, necessary for elevator. Now, I may get possession of 2nd story of building 1 May, as board of education may move out, and will let you know about it in a few days from N. Y.; it's not settled yet. If they move you can have that floor for office and I will fit up rooms for the help on the south or dark side of building; so don't decide about elevators till that is determined.

Talk to Rice & Co. that I have rented you the b'ld. and am to put in engine, boiler, and elevator."

14 EXHIBIT.

Letter (*Page* 95).

White to Guyton.

"APRIL 13, 1878.

Mr. B. has been under the weather for the past few days, but is out again to-day, and we hope to send you some money immediately, but you have no idea of the difficulty in borrowing money here in N. Y. I feel as if I could do far better in Chicago. Now, I write particularly to ask you to see how much you could borrow on all the real estate put in a lump, the list of which I gave you for exchange with Shober; so when I come on to Chicago I may at once deed the property to your wife and all may be arranged yet satisfactorily. I will need some money to put in the engine, boiler, and elevator. Rice only can bear a part of the expense.

With regards and hope for cleaning up the 5-M matter soon."

15 EXHIBIT.

Letter (*Page* 95).

White to Guyton.

No date (incomplete).

"I told Mr. B. I could not understand it, but he said you know just what to do under such trying circumstances, as you had been in such a position before. Of course, I don't understand it and don't feel as if I ever could get used to such a position so trying
447 and uncertain. I have always paid and been paid cash, and this kind of or rather way of doing business is entirely new and novel to me. I hope matters will be straightened out soon, very soon, that daylight may be seen and we all may be happy yet.

Now, a word about the real estate matter. If you can get 10 M on all the real estate I gave you the list I will at once deed it to your wife and all will be well, or to explain any amount over 5 M you may have to me in the litho. Co. I can't explain the real estate matter now, but will say now any am't over 5 M raised on all the list you can make use of, and when I reach Chicago perhaps I can arrange to let you have anything over 2,500 you will be able to raise; so do try and see what you can do by putting in the whole property in lump. I have abstracts almost up to date on each piece. This is a good idea. Please see what you can do & we may be happy yet. Don't weary of writing me, as I want to hear frequently of how matters are getting along. If the future field is one-half of what you say it is it's a grand, good thing.

P. S.—Have patience and faith, and, above all, keep cool and unexcited. I appreciate the position you have put your name, and will care for it as — it were my own.

"Remember that my name is not being used. While my desire for certain reasons is fulfilled, you are, at the same time, benefitted, as you very well now perceive and understand."

16 EXHIBIT.

Letter (*Page* —).

White to Guyon.

"APRIL 4, 1878.

If you are certain of being able to carry through your contract and agreement with Cotzhausen would it not be well to purchase at once the large-sized Potter press now in Potter's store in N. Y. with your own individual note, as I understood you could do, provided you can do so on as good terms as he offers here, namely, 750 to 1,000 cash; balance two years, at 7 per cent.? Now, I could arrange on such terms here. Can you do as well or better in Chicago with his agents? I doubt it. By paying cash he will deduct 15 per cent. from his price list, viz., 4,500. You can also buy the next size, 4,000 same way.

Just rec'd telegram from C. T. B. in Gloversville; had not seen McNab yet; expect word every minute.

Be exceedingly careful what you do or say.

Please telegraph me if the $1,000 Chase Nat'l Bank check has been paid and oblige.

I leave the money matters entirely to C. T. B."

17 EXHIBIT.

Letter (*Page* 115).

Cotzhausen to Thurber.

"FEB'Y 13, 1878.

I have consented to transfer to Mr. B. F. Guyton my whole stock interest in oleog. comp., being $20,000 of stock fully paid up (whole am't outstanding, $22,000), at par, taking mostly notes in payment, at 1, 2, & 3 years, provided you and Mr. Kurz favor the change, and believe it to be for your best interest. The inquiries I have instituted as to Mr. Guyton have met with quite favorable responses as to his character. He proposes to give his undivided attention to the business, a thing I cannot possibly do, and entertains comprehensive ideas as to enlargement. I am assured that no change shall be made in the personal of the business, and that all are to be retained. I have also deemed it my duty to insist upon retaining the
448 services of Mr. Muentzner, who of late proves very efficient and, in my opinion, will eventually prove to be quite a valuable acquisition.

In settlement of 'bills payable' Mr. Guyton proposes that the company turn over to me the outstanding and running acc'ts. I

am willing to accept the same in so far as noted good in classification made January 1st, 1878.

I also understand that the company shall endorse Mr. Guyton's notes to me and that the stock of 'chromos on hand'—Eibsee, etc.—are to be held in store as security for me, the company withdrawing for purposes of sale as fast as needed, turning proceeds over to me on account.

If these various matters meet with the approval of Mr. Kurz and yourself, then please to call a stockholders' and directors' meeting for Saturday night, at 5 o'clock, to consummate our proposed transfer. If not agreeable, notify me without delay, so I — put an end to further negotiations. I almost regret having entertained the project at all."

18 EXHIBIT.

Letter (*Page* 116).

Cotzhausen to American Oleo. Co.

MARCH 11, 1878.

The assignment of outstandings calls for a weekly report and settlement of all collections. The third week has now passed by, and I have received no returns as yet.

About the middle of this month a note becomes due at Second Ward Savings Bank which I executed for the accommodation of your company, and which you negotiated. I expect that the same will be promptly protected, so as not to put me to trouble. Mr. Guyton has not as yet made good that certain draft of $5,000 given to me on purchase of stock. It is a matter of great curiosity to me whether any of his promises can be relied upon.

19 EXHIBIT.

Letter (*Page* 116).

Cotzhausen to American Oleo. Co.

MAY 30, 1878.

By the terms of our contract all outstandings remaining uncollected after the expiration of three months were to be placed in our hands for collection. The time has expired and I have not heard from you for some weeks. Please favor me with a complete statement of all collections so far made and amounts deposited by you to my credit. The accommodation note I have taken up myself, some weeks ago, and charged to your acc't, with interest up to the time.

Mr. Guyton has not as yet made good that first $5,000. He is taxing my patience enormously. Is there any prospect close at hand of his being able to consummate his arrangements?

20–29 EXHIBITS.

Letters (*Page* 117).

White to Thurber.

SUMMER OF 1878.

20 Ex.

(No date.)

"In haste I write you these few lines, so as to catch the morning mail. I was unexpectedly called out of town Monday night, and returned last eve. and found your telegram waiting me. I will send Sylvester check of $1,000 this morning, and trust to raising same amount on judgment note by company. So please send by return mail, or, if in time, by Jim, a judgment note for 30 days for $1,000. I send $1,000 even, and say in letter to Sylvester that, by calling on you, you will make up the interest, which amounts to about $12 or $14. In fact, the following is an exact copy sent Sylvester:

'I have overpaid interest account on previous notes paid, and Mr. Thurber will pay you the interest due on above note after
449 deducting extra interest paid.'

So you will understand. If he should not care to allow interest on account of part overpayments, why you will have to settle best you can.

Have Jim come down on first train — possible. He will probably be able to return next day. Try to get pass and return for him and any little extra he may desire to settle board account, as I can't bear to have a hotel bill remain unpaid a day *a la* Guyton.

Yes; keep Bruns. and St. Louis. I believe, as you say in your letter, 'you have not paid out one cent more than necessary;' still, permit me to again impress the importance of making every cent tell.

Yes; let us move right away; nothing in way to prevent it. You can pay all moving accounts, &c. So you had better at once (quietly, though) commence to make arrangements with teamster, boat, insurance—be very careful of this account; fully insure—&c. I hope to have the shafting in a week or ten days. Don't fail to tell Jim to come down on first train, and telegraph me what road and train so I will meet him, and I will try to have him return next train.

Please write me about engineer, &c.

P. S.—Have Jim take first train down this afternoon."

21 Ex.

AUG. 8TH, 1878.

Yours of 6th, with inv. & order statements, rec'd yesterday evening; also your telegram this 11 a. m.

I prefer seeing you in person concerning the matters referred to therein, and, as you will be in Chicago Saturday eve. I will meet

you at the Tremont or elsewhere that eve. at any hour you may name. Please not to fail in coming. I sincerely hope the Boston note was not protested.

22 Ex.

(No date.)

In haste I write these lines.

Having no influence at Traders', you had better keep them satisfied by remitting what you can spare, and send me every mail for Taylor & Co. as you collect. Please don't wait, but send some every day and keep me thus less anxious. Please write me daily and, if necessary, twice a day, for I am feeling exceedingly anxious.

Don't fail to send as you collect; then I know for a certainty what to count on. Taylor is persistent now. Send me for 13th sure; one of the 400 is then due.

Just time to catch train for mail; this in haste.

Don't pay anything to Taylor or Clarke now, but to me, and I will see them, as I can make a little go far from what I have said to them.

23 Ex.

CHICAGO, *Aug.* 13*th.*

Your letter received this morning. I understood you that the Taylor note would without doubt be extended simply by your request, and was quite surprised when you wrote of my calling on him. I explained to you fully my position at present, and if you had spoke to me that there was the least doubt of an extension I might have arranged it in some way, but it was unexpected. I hope they have extended the note. Please inform me at once by mail.

Please let me know the No. of horse power of your engine and boiler.

Oh! if G. had only left that amount in the business we
450 would now have clear sailing. We must not give up or in at this point, though.

24 Ex.

CHICAGO, *Aug.* 19*th*, '78.

I have given my brother a letter to Mr. Rodway, and if he is not successful there I wish you would give it your personal attention. Jim not being ever in business it will be all new to him, so that I would be greatly obliged would you explain everything in detail to him. He is anxious and willing to learn. I would like to have him learn the business from the beginning. Please see that his board is paid; also any spending money he may want furnish him.

I wish you would write me often, as I am, of course, anxious. Unless absolutely necessary, don't send Taylor or Clarke to me, as I hope to have everything in good shape when we move down.

25 Ex.

(No date.)

I hope you will give Jim your personal attention in teaching him the business; he is anxious and willing and only needs encouragement and patience.

26 Ex.

CHICAGO, *Sept. 15th*, 1878.

Your letter duly received. We must not allow the 1 M Cotzhausen to pass. It will affect us in a way not to be recovered from in outstandings, &c. We can afford to be sued on other accounts rather than have this pass unpaid and protested and thus affect Munson and all.

So please send Braus 500 and St. Louis 300, and I will do my best on balance.

Send more if possible, but those two by all means.

Now, don't by any means disappoint me; better make a 1 M note at bank if possible, and stem the tide if you don't receive Braus and St. Louis in time. Wednesday is the last day, and I must mail check on 10 o'clock train that morning or all is lost. Now, don't for any sake, disappoint me in this.

Engine and boiler in running order and steam on, driving the pulleys and belts nicely.

Elevator in to-day, so Hartt can commence to-morrow.

Yours in haste. Write me at once.

27 Ex.

SEPTEMBER 21, '78.

Can't you fix friend without my calling? I should think by sending him a hundred or two he would be satisfied.

I wish you would have Gove give orders to have press put in at once. I called yesterday, telling him all was ready to move in, but he spoke of freight, &c., so I could say nothing. Now, if he would put this in at once so much would — done before your materials would be ready.

I have not decided yet about engineer, and if you can recommend your man it would be well to have him in readiness. I will leave on the boat for Milwaukee next Tuesday night, and will see Sylvester and all and try to satisfy all.

I would like to know if you have plenty of orders to execute ahead so as to pay expenses along, or are you short of them? Please let me know at once when you are to ship, &c.

451 28 Ex.

CHICAGO, *Aug. 22nd*, 1878.

Yours of 21st at hand. Yes, I would advise rest by all means in your present case, as I feel you need this more than anything else. I am exceedingly sorry to say I have unexpectedly been called East and leave to-night, but will be back Thursday or Friday of next week.

I have been about to-day endeavoring to collect some funds, but without avail. Mr. Munson gave me an order on Cincinnati for one hundred dollars, which I enclose for your use. Don't be afraid; it's as good as the wheat. This is really the best I can do, tho' regret-

ting it terribly. Please not to use Co.'s name on it; merely your own.

Can I be of any assistance to the company in N. Y. in collecting or otherwise? If so, address me, No. 22 West 19th St., New York city.

Hoping you restored health and a soon relief from this temporary embarrassment.

P. S.—Especially pleased to hear of my brother getting along so well and hope he will continue to improve.

29 Ex.

THURSDAY (no date).

In haste I write these few lines. The plasterer just threw up his job and left me in the lurch, so I telegraphed you at once to send no more till Monday or Sunday night boat, as insurance will be just the same there as here and you probably can arrange it better with the present companies now carrying you; don't forget the return premium due you.

I now send another telegram to send everthing pertaining to the office at once, as that all goes on the 3rd floor, and it can be placed there as soon as it arrives, and so much will be done.

I may possibly telegraph you to ship Friday night, but I fear plastering, &c., will not be far enough advanced; still you might be on the lookout for work to that effect. We could then haul it Saturday morning and have it all in b'ld. by night. I said ship Monday or Sunday, but perhaps it would be better Saturday night, if they keep freight on board over Sunday; still, I will telegraph you when we are ready, and if you are ready to ship that evening just do so—I mean the evening of the day you receive my telegram to ship.

The man here charges $7 a day, with team and men for hauling, unloading, &c. Will it pay to have your man come along or not? Of course, I mean to move everything this week onto the dock, if not the boat; clear out of Caswell's, anyway.

P. S.—Don't forget to have office secured with sign, &c. Leave stock book. It must be an awful big book to handle; still one of the teams surely can haul it, with some of the Co.'s books, to the vault in your brother's store.

If you don't ship till Sunday night nothing is gained that I can see shipping Saturday night, unless they keep freight on board over Sunday and thus save insurance.

30–32 EXHIBITS.

Telegrams (*Page* 117).

White to Thurber.

SUMMER OF 1878.

30 Ex.

"Sick yesterday; telegram just received; can do nothing till Cotzhausen concludes.

"A. WHITE."

452 31 Ex.

"Meet Jim on arrival morning boat with letters; be ready to take morning train without fail; important financial matters.

"A. W."

32 Ex.

"S. fixed; keep Bruns and St. Louis; have Jim come down on first train."

A. W.

33 Exhibit.

Agreement (*Page* 134).

Alex. White with S. B. Munson, Jr.

Dec. 13, 1878.

Transfer to Munson of 50 shares of stock of American Oleograph Company in consideration of stock of Corrugated Elbow Co. and guaranteeing to Munson a position as treasurer of the lithographing company for three years at certain salary.

34–39 Exhibits.

Letters (*Page* 135).

White to Munson.

New York, *July — Oct.*, 1879.

34 Ex.

Your telegram just rec'd stating brother's refusal to sign bond and urging me to come on. Of course, at this distance I do not understand the case, and couldn't advise any one to sign a bond. Being on the ground & with advisers, brother can judge for himself; so my advice would be of no account. How does it differ from the former case of attachment? We certainly have as good points as then. Let the custodian remain; it will only be at his costs, no matter how it turns out. If we succeed in the case, "all right." If we do not he can get nothing from us, as the mortgage will take precedence, and it will take a year or more to reach the trial of the case. Am I not right? Of course it's unpleasant to have a custodian about, but by right management thro' Buell, Barker, or Sisson you can get a friend; put in Stacy, for instance; better have all the Co.'s property unmortgaged taken off. What do you think of sending all the chromos to me in New York? I would make it my business to dispose of them in some way. I believe it's a good idea. You need not say anything of it to others; let it be a matter between us. Thus Cotzhausen would be ousted out of all, as he deserves. It's certainly his actions and doings that have injured our credit, I fear irretrievably. Now, would not Taylor put in our

accounts with Co. into a new mortgage and have it all run to him; make it a bond mortgage, issuing the bonds to bearer? This is often done, and we would then be in a better position than now. Won't you see him about it, please? In a new mortgage no need of describing stones; they can be numbered and the document otherwise shortened. By the way, have the stones yet been inventoried and numbered? Anxiously awaiting your balance sheet.

P. S.—I could do no good by coming on. I would not be taken on a bond now, and if it's perfectly safe to sign the bond brother will readily do it without my advice, and if it's unsafe I could not advise him, of course, to do it.

35 Ex.

(Incomplete.)

Tho' if I can do any good, and you will send me on $50 to cover me expenses there and return, I will leave Thursday evening preceding Thanksgiving Day, reaching Chicago Saturday morning, but would like to leave Saturday eve again for N. Y.

453 I'm about changing my lawyers in my 2 cases, and will probably commence another suit in a few days, perhaps a week or two, and must be here to do it and arrange preliminary matters. Now, this will give us a few days to communicate about what to do, and have all papers and matters arranged before my arrival, so everything can be done that Saturday I arrive, as I have no time to tarry from N. Y.

1. So please communicate with me what can be done.
2. Also what you think of my calling on Potter. Has he done anything or have you seen him about his press?
3. Why don't you send me chromos or get them out of Co.'s possession, to apply on our indebtedness? See Barker & Sisson or Buell about this.

In haste to mail this; don't know anything else to say; will come on, if you think any good will result, Thursday before Thanksgiving, but not before; can't possibly leave before, so don't press it unless some good and definite result will follow. Send me 30, if not 50. Hastily I write these lines.

36 Ex.

Your last letter just rec'd (Saturday) by mere accident. My address is now, and will be till I write you of a change, room 18, No. 744 Broadway, N. Y., so please not to hesitate writing me on account of not knowing my address. Your telegram about wanting 4 m. not yet rec'd on account, doubtless, of my absence for several days in the country. Your letter made me feel "terribly bad"—not a solace, not a hope of any kind; but, Mr. Munson, how can you ask me such questions as you do? "Will you help me; do you care to help me? You can if you care to make the exertion." You are well

aware when I had money I always invariably gave it to you, and how much have I ever received back? Yes, many times when I ought not to have done so, money that really belonged to others I have loaned you; times when I really needed it myself. Now when you ask it and don't receive it you believe I hold it back. I really don't know what to say next to you. This perhaps will suffice, and put the matter in a concise form. I am not worth to-day one cent, and since the White estate was divided have not had the control of over $25 at a time, and don't know where I could borrow $500. I know I don't know, for I have tried it repeatedly during the month of September, 1879. Yes; not even $100. Now, that's my condition and position, and when you say to me that I can borrow for you (to say nothing of it more for myself) $4,000 you can imagine how odd it strikes me. Why, I'm worse than worthless, for I owe others 40,000, and expect several judgments of others of 40 M more, not fictitious claims, but moral and legal ones. Still more, I have forced others by my doings and operations and investments, some of which you are well aware, to borrow over $30,000 to pay matters that I ought to have paid. What position am I in to ask for money for others, to say nothing of asking for myself? In fine, the parties that I would look to for money have not got it, even if they were inclined to loan it. The only hope I now have for our mutual matters are the suits here pending, and one in particular, amounting to $30,000, but when it will come off or be settled the Lord only knows.

Mr. Munson, I fully appreciate your position and condition; understand that, and if you had only paid that promised check I might have helped you some, I think, but not so very much. It
454 would have given that confidence and trust which is essential and fundamental for any financial doings. I would not have had this occurred for the world, but it's done, and that's the end of it. I am tied hand and fist; feel like a fish out of water. Always had up to now what I wanted, and you can imagine to a certain extent my feelings under such circumstances.

Have tried to borrow money repeatedly, but without any success or hope of any. If I can get hold of 500 in any way on acc't of the suits will send it to you for Hill to postpone selling the Cor. E. stock, for this, it seems to me, is the most valuable thing for the security; don't you think so?

Now, I must hurry to get this in the eve. mail. Don't be so long in writing me, but write me often and let me know how everything is getting along, even tho' there may be no good news to tell. I want to know it all, anyway.

P. S.—Don't you consult Buell about all the legal doings of the Co.? Will write him to please see that it's done right and carefully, as Cotzhausen is a lawyer and sharp and must be met by equal sharpness.

37 Ex.

I hope nothing will happen the Co. Do have Taylor make a new mortgage putting in your and my claims, and then if old Cotzhausen

wants to buy the mortgage let him do it. If anything happens, why not make a long lease of the top floor with my brother.

Don't fail to telegraph me about Bently advising or not advising Storrs to commence suit *vs.* Crocker. It's his only hope. Tell him to put Storrs on his guard not to say a word to Bowen about us having paid a cent, as that would spoil all.

I wish you would keep my letters by themselves, as they contain matters I would not care to be seen by any one but you. Yours will be carefully preserved as well.

Have just arrived and drop you this in haste. Write soon. Hope brother has seen fit to sign the bond, as then we will have time to arrange matters for the next onslaught.

38 Ex.

Yours just received stating Cotzhausen's intention to buy American Oleograph mortgage; will write Barker & Buell at once to see what can be done to stop foreclosure.

To think of Cotzhausen, as you say, scooping the whole thing is awful; you would lose your 4 M, I my 7 M, we have put in, besides Potter would lose his press, and Cotzhausen gain this, which would repay him for buying the mortgage.

You have never replied to many questions I have asked you; particularly vital was the point of Taylor permitting a new mortgage to include both your and my own and Thurber's debt the Co. owes us.

Hoping to hear from you soon fully as to all our matters.

39 Ex.

Your 2 letters just rec'd; will write now in haste only about Am. Oleo. Co.'s affairs; am dumfounded at your arrangements with Cotzhausen without consulting me; the first I ever heard of it. I must say I think at least you would have consulted me before taking such a step, and still I don't understand it fully from your letters, so will you please answer the following questions:

455 1st. Has the Taylor indebtedness run up to 7,000, or how much?

2nd. If it's foreclosed could the 10 M be considered the amount to be foreclosed, as the Co. owe you the difference or me between the 10 M and what they owe Taylor?

3rd. Are you taking Sisson's advice in these legal matters or Buell's or both, or are you acting without legal advice?

4th. You say the amount owed Cotzhausen is 7 or 8,000. How do you make that out? There is due him 15 M by notes, but only 3 M really due. How do you make it 7 or 8 M? Don't understand this at all.

5th. Have you been so foolish as to make a second mortgage and give it to Cotzhausen? Surely not. If you have compromised, did he give your own notes back? Why, you have ruined our case

against him by compromising. I don't see what under heavens made you do this.

6th. Please let me know exactly what you have done and send me an exact copy of the note you gave Cotzhausen. I'm really thunder-struck with the whole thing. I thought this last hope you would keep free and clear. Now, if you have compromised in this way, what's to prevent sending on the chromos to pay you and me and Thurber a part due each of us by the Co.? I am working on a moneyed man here who may buy up the mortgage; so have Taylor hold on a little yet.

But I can't do anything if you do things vital to the Co.'s existence without consulting me; so I wish you would answer in detail each of above questions at once, as every day counts now. Have asked you to write me daily of how matters progress, but only now and then receive a reply. Don't let Thurber go. I hope he will stick it out. Had worked up this new mortgage matter with a party here, but your doings without my consent or knowledge of putting in a 2nd mortgage has spoiled all. Please let me know next time of your intentions, or, in other words, please consult me before taking important steps.

You say Sisson advised you to file a bill *vs.* the other Co. What other Co. do you mean? Not the Cor. E. Co., surely. No; I rarely ever see a Chicago paper.

Now, please let me know in detail what you have done exactly; your letter is very indefinite and not logical. Just state exact position of things and oblige, and do this on receipt, so I can get an answer to this by Friday or Saturday at farthest, as every day counts. I can't do anything further about getting money on the mortgage till I see what you have done. Please state the exact figures, &c., &c., so there will be no mistake.

Will write you soon about other matters. Please answer at once. In haste to get to-night's mail.

456 COMPLAINANT'S EXHIBIT No. —.

List of Real Estate Offered Cotzhausen in Trade and Placed with Guyton for Sale.

D. S. Lee's subdivision, north of Barry Point road, sec. 13, T. 39, R. 13; lots 4 and 5 of subdivision of north 125 feet, block 3.

Stone's subdivision, north 15 acres, sec. 34, T. 39, R. 14; lot 10, block 4, State street, south of 35th St.

Elston's addition, sublots 3, 4, 5, 6, 7, 8, 10, and 11 of lots 20, 21, 22, and 23, block 24.

J. H. Ree's subdivision, west half of southwest quarter sec. 36, T. 39, R. 13, and that part south of canal, southeast quarter sec. 35, T. 39, R. 13.

Adam Smith's subdivision of blocks 4, 5, 6, 7, 8, and 9; lots 15, 16, 17, 18, 19, and 20, block 14; lots 11, 12, 13, 14, 15, 16, 17, 25, 26, 27, 28, 29, 30, and 31, block 15; lots 28, 29, 30, 31, and 45, block 16.

The defendants then offered Exhibits One (1), Two (2), Three (3) in said cause.

457 DEFENDANTS' EXHIBITS.

1 EXHIBIT.

Compilation.

Alex. W.'s statement of his indebtedness to estate, as compiled during the hearing of this case, in summer of 1882.

Received following assets:		
City National Bank	17,167 35	
Importers' & Traders' National Bank	19,653 02	
Currency	5,000 00	
Asa D. Reed, bond and mortgage	61,000 00	
C. E. Couch, " " "	30,100 00	
Tuley & Barker's notes	2,700 00	
Interest on bonds and mortgages	12,624 26	
Rents	115,189 82	
Personal property sold	3,497 70	
Real estate sold	31,407 55	
Suspense account	351 59	
		298,691 29
Expended following amounts:		
Account construction 5th Ave. building	62,028 12	
" " Lake & Franklin St. b'ld'g	39,777 27	
Account expenses Lake & Franklin St. b'ld'g	4,468 54	
" " 5th Ave. building	9,847 27	
" " Lake Forest property	4,071 93	
" " Warren Ave. "	2,599 23	
" " Peoria St. "	1,168 95	
" " Thompson "	119 71	
" " 40 acres Jefferson prop.	337 97	
" " " " Lake "	6,890 07	
" " Wabash Ave. property	3,319 96	
" " South Branch "	889 31	
" " Lake & 5th Ave. "	1,300 17	
" " Washington St. "	50 00	
Taxes unapportioned	6,982 69	
Account expenses personal property	572 60	
Account family expenses	43,176 15	
On hand as assets:		
Traders' Bank	1,245 96	
Accounts due	166 00	
Bills receivable	7,798 62	
		196,810 52
Balance due estate, without interest, by A. W.		101,880 77
		$298,691 29

2 EXHIBIT.

Account.

Amounts drawn by Alex. White from oleograph Co.

Amounts received in cash from the American Oleo. Co.:		Amounts paid out for the American Oleograph Co.:	
		1879.	
July 25	100	March 22	125
26, Buell, for. A. O. Co.	25		66 16
26	100		250
Aug. 4	100	Balance	33 84
14	100		
21	50		
	475 00		475 00

458 3 EXHIBIT.

Account.

Munson's figures as to receipts and expenditures of company in July and August, 1879.

Defendants then offered in evidence for the first time and during the progress of the hearing a deed of trust made by Alexander White to John D. Quinlan, recorded in the recorder's office of Cook county, Illinois, August 29, 1878, rec. document number being 192,516.

459 This indenture, made this first day of Sept., in the year of our Lord one thousand eight hundred and seventy-seven, between Alexander White (bachelor), of the city of Chicago, Cook county, Illinois, party of the first part, and John D. Quinlan, of the city of Chicago, county of Cook, and State of Illinois, party of the second part, as trustee, as hereinafter specified (and in case of the death or absence or removal from said county of Cook, refusal or inability to act of said party of the second part, then Daniel Shepard, of said city of Chicago, shall be, and he is hereby, appointed and made successor in trust to said party of the second part under this deed for the uses and purposes hereinafter expressed, with the same power and authority as said trustee), witnesseth:

That whereas the said Alexander White has executed his one promissory note, payable to his own order and indorsed by him, in the sum of five thousand dollars, secured to be paid by the above-named certain promissory note, bearing even date herewith, payable to the order of said Alexander White two years after date, with interest at the rate of ten per cent. per annum (interest payable semi-annually), at the First National Bank, Chicago, Illinois;

460 And whereas said party of the first part is desirous of securing the prompt and full payment of said promissory note and interest that may accrue thereon in whose hands soever the same may be:

Now, therefore, the said party of the first part, in consideration of the premises and for the purposes aforesaid, and in the further consideration of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed, has and does hereby grant, bargain, sell, and convey unto the said party of the second part, his successor in trust aforesaid and his and their heirs and assigns, all the following-described lands and premises, situate in the county of Cook and State of Illinois, to wit:

Lots three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), & eleven (11), in H. M. Thompson's subdivision of lots twenty (20), twenty-one (21), twenty-two (22), and twenty-three (23), in block twenty-four (24), of Elston's addition to the city of Chicago, being two hundred and nineteen feet, more or less, on Elston road, corner of Sloan street; also lots fifteen (15) and sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty (20), in block number fourteen, and lots eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), and thirty-one (31), in block fifteen (15); also lots numbers twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), and forty-five (45), in block number sixteen, in Adam Smith's sub-
461 division of the south half of the north half of the southwest quarter and the southwest quarter of the southwest quarter of section thirty-six (36), township thirty-nine (39) north, range thirteen (13) east, of the third principal meridian, in Cook county, Illinois:

To have and to hold the same, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging, to the said party of the second part, his successor in trust aforesaid and his and their heirs and assigns, forever, in trust nevertheless, that in case of default in the payment of the said promissory note or interest or any part thereof, according to the tenor and effect of said note, or in case of waste or non-payment of taxes or assessments or neglect to procure or renew insurance as hereinafter provided, or in case of the breach of any of the covenants or agreements herein mentioned, then and from thenceforth it shall be lawful for the said party of the second part or his successor in trust, on application of the legal holder- of said promissory note or either of them, to enter upon, possess, hold, and enjoy the above-granted premises, and, either with or without such entry, to sell and dispose of said premises hereby granted, and all right, title, benefit, and equity of redemption of said party of the first part, his heirs and assigns, therein, at public auction at the north door of the chamber of commerce, in the city of Chicago, in the State of Illinois, or on said premises or any part thereof, as may be specified in the notice of such sale, for the highest and best price the same will bring in cash, thirty days' previous notice of such sale having been given

by publication once in each week for four successive weeks in the Chicago Legal News or in any newspaper at that time pub-
462 lished in said city of Chicago, and to make, execute, and deliver to the purchaser or purchasers at such sale good and sufficient deed or deeds of conveyance for the premises sold, and out of the proceeds or avails of such sale and the purchase-money paid thereon, after paying all costs of advertising, sale, and conveyance, including the reasonable fees and commissions of said party of the second part, attorneys' fees, and all other expenses of this trust, including all moneys advanced for insurance, taxes, and other liens or assessments, with interest thereon at ten per cent. per annum, then to pay the principal of said note, whether due and payable by the terms thereof or not, and interest on said note up to the time of such sale, rendering the overplus (if any) unto the said party of the first part, his legal representatives or assigns, on reasonable request; and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase-money; which sale or sales so made shall be a perpetual bar, both in law and equity, against the said party of the first part, his heirs and assigns, and all other persons claiming the premises aforesaid or any part thereof by, from, through, or under said party of the first part or any of them.

And in case of a foreclosure of this trust deed as provided by section thirteen of an act of the General Assembly of the State of Illinois entitled "An act to revise the law in relation to mortgages of real and personal property," approved March 26th, 1874, or under any law of the State, upon default and application made to the said party of the second part or his successor in trust as aforesaid by any *cestui que trust* under this deed, it shall and may be lawful for the said party of the second part, in his own name or otherwise, by suit in any court of competent jurisdiction, to obtain a decree for
463 the sale and conveyance of the whole or any part of said premises for the purposes herein specified by said party of the second part as such trustee or as special commissioner under order of court, and out of the proceeds of any such sale to first pay the costs of such suit, including his reasonable charges as attorney and solicitor therein, in addition to and besides the costs of advertising sale, conveyance, and moneys advanced, with interest as above provided, then to pay the amount found by the court to be due and payable upon the indebtedness aforesaid; and in case of any suit or proceeding at law or in equity wherein said party of the second part shall be made a party by reason of his trusteeship under this deed he shall be allowed and paid his reasonable costs, charges, attorneys' and solicitors' fees in such suit or proceeding by said party of the first part, and the same shall be a further charge and lien upon said premises under this deed, to be paid out of the proceeds of the sale thereof, if not otherwise paid by said party of the first part.

And in case of the appointment by any court of a new trustee to execute the trusts hereby created the sum of twenty-five dollars for the attorneys' or solicitors' fee of the petitioner in such proceed-

ing and all other expenses of such appointment and the execution of said trust shall be allowed and taken from the proceeds of the sale of said premises.

And in consideration of the money paid as aforesaid to the said party of the first part, and in order to create a first lien and incumbrance on said premises under this deed for the purposes aforesaid, and to carry out the foregoing specific application of the proceeds of any sale that may be made by virtue hereof, the said party of the first part does hereby release and waive all right under and
464 benefit of the exemption and homestead laws of the State of Illinois in and to the lands and premises aforesaid and the proceeds of sale thereof and agree to surrender up possession thereof to the purchaser or purchasers at such sale peaceably on demand.

And the said party of the second part, with or without readvertising, is hereby authorized and empowered to postpone or adjourn said sale from time to time, at his discretion, and also to sell the said premises entire without division or in parcels as he may prefer or think best.

And the said Alexander White, for himself and his heirs, executors, and administrators, covenant- and agree- to and with the said party of the second part, his successor in trust hereinbefore named and their assigns, that at the time of the ensealing and delivery of these presents — is well seized of said premises in fee simple and has good right, full power, and lawful authority to grant, bargain, and sell the same in manner and form as aforesaid; that the same are free and clear of all liens and incumbrances whatever, and that he will warrant and forever defend the same against all claims whatsoever, and that the said party of the first part will in due season pay all taxes and assessments on said premises and exhibit once a year, on demand, receipts of the proper persons to said party of the second part showing payment thereof until the indebtedness aforesaid shall be fully paid, and will keep all buildings that may at any time be on said premises during the continuance of said indebtedness insured in such company or companies as the holder or holders of said note may from time to time direct for such sum or sums as such company or companies will insure for, not to exceed the amount of such indebtedness, except at the option of said party of the
465 first part, and will assign with proper consent of the insurers the policy or policies of insurance to said party of the second part as further security for the indebtedness aforesaid; and in case of the refusal or neglect of said party of the first part or either of them thus to insure or assign the policies of insurance or to pay taxes said party of the second part or his successor in trust or the holder of said note or either of them may procure such insurance or pay such taxes and all moneys thus paid, with interest thereon at ten per cent. per annum, shall become so much additional indebtedness secured by this deed of trust and to be paid out of the proceeds of sale of the lands and premises aforesaid, if not otherwise paid by said party of the first part.

In case of full payment of all the indebtedness aforesaid prior to any sale of the lands and premises above described or any part

thereof and a performance of the covenants and agreements herein made to be performed by the said party of the first part, then a reconveyance to be made to the said party of the first part, his heirs or assigns, at his expense; and in case any notice of sale of said premises or any part thereof shall be published, and the said indebtedness shall be paid after any such publication and before sale, the said party of the first part shall pay for such publication, and also attorney's and trustee's fees for services and all expenses therein to the date of such payment.

And it is stipulated and agreed that in case of default in any of said payments of principal or interest according to the tenor and effect of said promissory note aforesaid, or either of them or
466 any part thereof, or of a breach of any of the covenants or agreements herein by the party of the first part, his executors, administrators, or assigns, then and in that case the whole of said principal sum hereby secured and the interest thereon to the time of sale may at once, at the option (without notice thereof to said party of the first part, his heirs, assigns, or legal representatives) of the legal holder thereof, become due and payable, and the said premises be sold in the manner and with the same effect as if the said indebtedness had matured.

And said party of the first part, for himself and his heirs and assigns, do further covenant and agree, to and with said party of the second part, his successors in trust aforesaid, and his heirs and their assigns, that in case of a sale and conveyance as aforesaid of said premises any deed or deeds of conveyance made in pursuance of such sale shall be *prima facie* evidence of the due compliance with and performance of the terms, conditions, and requirements of this deed of trust by the party of the second part, or his successor in trust aforesaid, in advertising and making such sale and conveyance to the extent of the recitals contained in such deed or deeds.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

ALEXANDER WHITE. [SEAL.]

Signed, sealed, and delivered in the presence of—

—— ——.

467 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Olin R. Bronse, a notary public in and for and residing in the said county, in the State aforesaid, do hereby certify that Alexander White, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 6th day of September, A. D. 1877.

[SEAL.] OLIN R. BRONSE,
Notary Public.

(Endorsement on deed :) Deed of trust. Alexander White to John D. Quinlan, for use of legal holder of note.

STATE OF ILLINOIS, } ss:
County of Cook, }

No. 192,516.

468 This instrument was filed for record in the recorder's office of Cook county aforesaid on the 29 day of Aug., A. D. 1878, at 10 o'clock a. m., and recorded in Book 867 of Records, on page 279.

JAS. W. BROCKWAY, *Recorder.*

(Endorsed :) Filed Dec. 22, 1884. Wm. H. Bradley, cl'k.

The defendants then offered as evidence for the first time & during the hearing the trustee's deed from John D. Quinlan to the property last described, which deed was recorded October 22, 1879, and the record document number being 241,797.

Which deed the court refused to admit in evidence or consider.

To which ruling of the court the defendants excepted.

469 *Trustee's Deed.*

This indenture, made this fourteenth day of October, in the year of our Lord one thousand eight hundred and seventy-nine, between John D. Quinlan, trustee, of the city of Chicago, in the county of Cook and State of Illinois, party of the first part, and Charles H. Quinlan, of the —, in the county of Cook and State of Illinois, party of the second part, witnesseth :

That whereas Alexander White, a bachelor, of the city of Chicago, in the county of Cook and State of Illinois, by a certain trust deed, dated the first day of September, A. D. 1877, did bargain, sell, and convey unto John D. Quinlan, as trustee, his successors, heirs, and assigns, all the premises hereinafter described, to secure the payment of one certain promissory note in said trust deed particularly described, to wit, of even date with said deed, for the sum of five thousand dollars, payable to his own order in two years after date thereof, with interest thereon at the rate of ten per cent. per annum, payable semi-annually at the First National Bank, Chicago, Illinois, which said note was afterwards endorsed and transferred to J. M. Harvey ;

And whereas it was expressly provided in said trust deed that in case default should be made in the payment of the said note or any part thereof, either of principal or interest, according to the tenor and effect thereof, or in case of waste or non-payment of taxes or assessments, or neglect to procure or renew insurance, or in case of

the breach of any of the covenants or agreements in said trust deed
473 mentioned—
[470] Then, on the application of the legal holder of the said note, the said trustee, after having given thirty days' previous notice before the day of such sale by publication once in each week for four successive weeks in the Chicago Democrat or in any newspaper published in the city of Chicago, might sell and dispose of the said premises, and all right, title, benefit, and equity of redemption of the said Alexander White, his heirs and assigns, therein, at public auction at the north door of the chamber of commerce, on the southeast corner of La Salle — Washington streets, in the said city of Chicago, in said Cook county and State of Illinois, for the highest and best price the same would bring in cash at the time mentioned in said notice, and also make, execute, and deliver to the purchaser or purchasers at such sale good and sufficient deed or deeds of conveyance for the premises so sold, which said trust deed is recorded in the recorder's office of the county of Cook and State of Illinois, in Book 867 of Records, page 279;

And whereas also default having been made in the payment of said note at maturity, and the interest, amounting thereon at the date of the notice of sale to the sum of five thousand five hundred and thirteen dollars and thirty-eight cents, $5,513.38, and the legal holder of said promissory note having applied to me, as such trustee, to cause said premises herein described to be sold for the purposes mentioned in and in accordance with the provisions of said trust deed, I, the undesigned, party of the first part, on the thirteenth day of September, A. D. 1879, caused due notice to be published in the Chicago Democrat, a newspaper published in the said city of Chicago, that said premises hereinafter described would, on the fourteenth day of October, A. D. 1879, at the hour of two o'clock in the afternoon of said day, be sold at public auction at the north door of the chamber of commerce, on the southeast corner of Washington & La Salle streets in city of Chicago, in said county of Cook, to the highest bidder for cash, by virtue of the power and authority in me vested by said trust deed; which said notice was duly published once a week for five successive weeks in the said Chicago Democrat, and that the date of the first paper containing the same was the 13th day of September, A. D. 1879, and of the last the eleventh day of October, A. D. 1879;

And whereas also the said premises having been, by the said party of the first part, on the fourteenth day of October, A. D. 1879, at two o'clock in the afternoon of said day, in the manner prescribed in and by said trust deed, and at the place last aforesaid, in pursuance of said notice, offered for sale at public auction to the highest bidder for cash, and the said party of the second part having been the highest bidder therefor, and having bid for the nine tracts of land first hereinafter named the sum of four thousand eight hundred dollars, he was duly declared the purchaser thereof. Each of said tracts having first been offered separately, and there being no bids

474 [471] therefor, they were offered and sold *en masse*, being in block twenty-four of Elston's addition to Chicago; and the said party of the second part having been the highest bidder therefor, and he having bid for the twenty-five tracts of land secondly hereinafter named the sum of six hundred and eighty-seven dollars and fifty cents, he was duly declared the purchaser thereof. The said 25 tracts having been offered for sale separately, and there being no bids therefor, they were then sold *en masse*, being in Adam Smith's subdivision and hereafter described:

Now, therefore, this indenture witnesseth: That the said party of the first part, as trustee as aforesaid, for and in consideration of the sum so bid as aforesaid to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has sold, conveyed, aliened, remised, released, and confirmed, and by these presents does sell, convey, alien, remise, release, and confirm, unto the said party of the second part and to his heirs and assigns forever all the following-described lots, pieces, or parcels of land situate in the county of Cook and State of Illinois, known and described as follows, to wit:

Firstly. Lots three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), and eleven (11), in H. M. Thompson's subdivision of lots twenty (20), twenty-one (21), twenty-two (22), and twenty-three (23), in block twenty-four (24) of Elston's addition to Chicago, being two hundred and nineteen (219) feet, more or less, on Elston road, corner of Sloan street; also—

Secondly. Lots fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty (20), in block fourteen (14), and lots eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), in block fifteen (15); lots number twenty-eight (28), twenty-nine (29), thirty, thirty-one (31), and forty-five (45), in block number sixteen (16), in Adam Smith's subdivision of the south half of the north half of the southwest quarter and the southwest quarter of the southwest quarter of section thirty-six (36), township thirty-nine (39) north, range thirteen (13) east, of the third (3rd) principal meridian, in Cook county, Illinois—

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, as the same are described and conveyed in and by the said trust deed, and also all the estate, right, title, interest, property, claim, and demand whatsoever, both in law and equity, of the said Alexander White, as well as of the said party of the first part, of, in, and to the above-described premises, with the appurtenances, as fully, to all intents and purposes, as the said party of the first part hath power and authority to grant, sell, and convey the same by virtue of the said trust deed:

To have and to hold the said above-granted premises, with their appurtenances, and every part thereof, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

JOHN D. QUINLAN. [SEAL.]

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Joseph N. Barker, notary public in and for the said county, in the State aforesaid, do hereby certify that John D. Quinlan, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act, as trustee, for the uses and purposes therein set forth.

Given under my hand and notarial seal this twenty-second day of October, A. D. 1879.

[SEAL.] JOSEPH N. BARKER,
Notary Public.

[Endorsed:] Trustee's deed. From —— ——, trustee, to —— ——. State of ——, —— county, *ss.* No. —. This instrument was filed for record in the recorder's office of —— county aforesaid on — day of ——, A. D. 18—, at — o'clock, — m., and recorded in book — of —, on page —. —— ——, recorder.

475–[472] Endorsements on trustee's deed: Trustee's deed. From John D. Quinlan, trustee, to Charles H. Quinlan.

STATE OF ILLINOIS, } ss:
Cook County, }

No. 241,797.

This instrument was filed for record in the recorder's office of Cook county, aforesaid, on the 22 day of October, A. D. 1879. at 1 o'clock p. m., and recorded in Book 837 of Records on page 437.

JAS. W. BROCKWAY, *Recorder.*

(Endorsed:) Filed Dec. 22, 1884. Wm. H. Bradley, cl'k.

470–[473] *Publisher's Certificate Attached to Trustee's Deed. Filed Dec.* 22, 1884.

Trustee's sale.

Whereas Alexander White, a bachelor, by his certain trust deed, dated September 1st, A. D. 1877, duly executed and recorded on August 29th, 1878, in the recorder's office of Cook county, Illinois, in Book 867 of Records, at page 279, did convey to the undersigned, John D. Quinlan, trustee, the following-described property, viz:

Lots three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), and eleven (11), in H. M. Thompson's subdivision of lots twenty (20), twenty-one (21), twenty-two (22), and twenty-three

(23), in block twenty-four (24), of Elston's addition to the city of Chicago, being two hundred and nineteen feet, more or less, on Elston road, corner of Sloan street; also lots fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), and twenty (20), in block fourteen (14), and lots eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), and thirty-one (31), in block fifteen (15); also lots numbered twenty-eight (28), *twenty-* (*28*), twenty-nine (29), thirty (30), thirty-one (31), and forty-five (45), in block number sixteen, in Adam Smith's subdivision of the south half of the north half of the south-
471 west quarter and the southwest quarter of the southwest quar-
[474] ter of section thirty-six (36), township thirty-nine (39) north, range thirteen (13) east, of the third principal meridian, in Cook county, Illinois, in trust to secure the payment of one certain promissory note executed by the said Alexander White of even date with said deed of * * * the date thereof, with interest thereon at the rate of ten per cent., at the First National Bank, Chicago, Illinois;

And whereas J. M. Harvey is by endorsement the legal holder of said note, on which there is claimed to be due at the date hereof for principal and interest the sum of five thousand five hundred and thirteen dollars and thirty-eight cents ($5,513.38), default having been made in the payment of said note and the interest due thereon at the date of the maturity thereof, and whereas the same is still due and unpaid;

And whereas it was provided in said trust deed, among other things, that in case of default in the payment of the said note or the interest thereon or any part thereof that, on application of the legal holder of said note, the said trustee should sell and dispose of the said property to satisfy said indebtedness, and whereas Margaret White claims to own said property:

Now, therefore, notice is hereby given that, in pursuance of the
472 request of the said legal holder of said note and of the powers
[475] and provisions in said deed of trust contained, I, the undersigned trustee, will sell at public auction to the highest bidder for cash, at the north door of the chamber of commerce, on the southeast corner of La Salle and Washington streets, in Chicago, Cook county, Illinois, on Tuesday, the fourteenth day of October, A. D. 1879, at two o'clock in the afternoon of said day, all the hereinbefore-described premises, together with the right, title, benefit, and equity of redemption of the said Alexander White, his heirs and assigns, forever.

Chicago, Sept. 13th, 1879.

JOHN D. QUINLAN, *Trustee.*

This certifies that a notice, of which the annexed printed slip is a true copy, was published for five (5) successive weeks, to wit, five (5) times in the weekly edition of "The Chicago Democrat," a newspaper published in the city of Chicago, of general circulation throughout Cook county and the State of Illinois; that the date of the first paper

containing the same was the 13 day of Sept., A. D. 1879; that the date of the last paper containing the same was the 11 day of Oct., A. D. 1879, and that we have received sixteen dollars for publishing the same.

Dated at Chicago, this 13 day of Oct., 1879.

J. A. DANIELS & CO., *Publishers.*

The foregoing was all the evidence introduced and offered in said cause by either party, which fact the court certifies, and this certificate is signed, sealed, and made part of the record hereof accordingly.

WALTER Q. GRESHAM. [SEAL.]

Endorsed: Filed April 9th, 1885. Wm. H. Bradley, clerk.

476 Afterwards, to wit, on the fourth day of June, 1885, came the complainant and filed in said clerk's office his motion in said entitled cause; which said motion is in the words and figures following, to wit:

Motion.

United States Circuit Court, Northern District of Illinois. In Equity.

FREDERICK W. COTZHAUSEN *vs.* ALEXANDER WHITE *et al.*

And now comes the complainant and moves the court that it modify the proposed certificate of evidence or bill of exception by making it appear in appropriate language upon the face thereof "that all and singular the testimony and evidence in said cause referred to as admitted or considered on the hearing was taken under the 67th rule in equity, as amended, pursuant to stipulation and orders of the court assigning time for that purpose, as will appear more particularly from the record of this cause, and that the offer of the trust deed of August 29, 1878, and of the deed of October 22, 1879, was made for the first time and during the progress of the hearing," as otherwise said proposed certificate or bill of exceptions would be susceptible of a construction contrary to the record
477 and naturally indicate that said witnesses were sworn and said testimony adduced in open court.

Respectfully submitted,

F. W. COTZHAUSEN.

Endorsed: Filed June 4th, 1885. Wm. H. Bradley, cl'k.

On the same day, to wit, on the fourth day of June, in the adjourned May term of said court, 1885, in the record of the proceed-

ings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

FREDERICK W. COTZHAUSEN
vs.
ALEXANDER WHITE *et al.* } In Chancery.

Now come the parties, by their solicitors, and the complainant's solicitor moves to amend the certificate of evidence herein, and after hearing arguments the court overrules the same. Thereupon the defendants are allowed twenty days in which to file a supersedeas bond.

478 Afterwards, to wit, on the twenty-third day of June, 1885, there was filed in said clerk's office an appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

UNITED STATES OF AMERICA, *Northern District of Illinois:*

In the Circuit Court thereof.

FREDERICK W. COTZHAUSEN
vs.
ALEXANDER WHITE, MARY S. WHITE, ELSIE WHITE, ANNIE C. WHITE, MARGARET WHITE, ANN WHITE, & JAMES B. WHITE.

On appeal to the Supreme Court of the United States.

Know all men by these presents that we, Elsie White, Mary S. White, Annie C. White, Ann White, and James B. White, of Chicago, Illinois, as principals, and Richard S. Reynolds, of Utica, N. Y., as surety, are held & firmly bound unto Frederick W. Cotzhausen, of Milwaukee, Wisconsin, in the penal sum of thirty-five thousand (35,000) dollars, lawful money of the United States; for the payment of which, well & truly to be made, we bind ourselves & each of us, our heirs, executors, and administrators, jointly & severally, firmly by these presents.

In witness whereof we have hereunto set our hands and seals this 10th day of June, A. D. 1885.

479 Whereas in a cause lately depending in the said circuit court of the United States for the northern district of Illinois, on the chancery side thereof, in which Frederick W. Cotzhausen was complainant and Alexander White, Elsie White, Mary S. White, Annie C. White, Margaret White, Ann White, & James B. White were defendant-, a certain decree was lately rendered by said circuit court and entered of record on the 9th day of April, A. D. 1885, decreeing that the said Frederick W. Cotzhausen have & recover

from the said defendants, Alexander White, Elsie White, Mary S. White, Annie C. White, Margaret White, Ann White, & James B. White, the sum of twenty-seven thousand eight hundred & forty-three & $\frac{22}{100}$ (27,843.22) dollars, together with six per cent. (6%) interest thereon from the 9th day of April, A. D. 1885, and costs of suit; and whereas the said Elsie White, Mary S. White, James B. White, Annie C. White, and Ann White have prayed and been allowed an appeal to the Supreme Court of the United States from the said decree of the said circuit court of the United States for the northern district of Illinois, and which appeal has been made a supersedeas on filing this bond:

Now, therefore, the condition of this obligation is such that if the said Elsie White, James B. White, Mary S. White, Annie C. White, & Ann White shall duly prosecute their said appeal to effect
480 and moreover pay the amount of the decree, interest, damages, and costs rendered and to be rendered against them, and just damages for delay in case they shall fail to make good their plea, the above obligation to be void; otherwise to remain in full force and virtue.

ELSIE WHITE,
By JAMES B. WHITE, [SEAL.]
Her Att'y-in-Fact.

MARY S. WHITE,
By JAMES B. WHITE, [SEAL.]
Her Att'y-in-Fact.

ANN WHITE. [SEAL.]
ANNIE C. WHITE. [SEAL.]
JAMES B. WHITE. [SEAL.]
RICHARD S. REYNOLDS. [SEAL.]

Approved June 23, 1885.

W. Q. GRESHAM,
Circuit Judge.

Endorsed: Filed June 23rd, 1885. Wm. H. Bradley, clerk.

481 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein Frederick W. Cotzhausen is the complainant and Alexander White, Mary S. White, Elsie White, Annie C. White, James B. White, Margaret White, and Ann White are the defendants as the same appear from the records and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this twelfth day of September, 1885.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

WM. H. BRADLEY, *Clerk.*

And I further certify that the underscoring in testimony is not a part of the original record and is not to be regarded.

WM. H. BRADLEY, *Clerk.*

Endorsed on cover: N. Illinois C. C. U. S. No. 401. Elsie White, James B. White, Mary S. White, Annie C. White, and Ann White, appellants, *vs.* Frederick W. Cotzhausen. Filed October 15, 1885.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1888.

NO. 129.

ELSIE WHITE, JAMES B. WHITE, MARY S. WHITE, ANNIE C. WHITE AND ANN WHITE,
Appellants,
vs.
FREDERICK W. COTZHAUSEN,
Appellee.

Appeal from Circuit Court of the United States for the Northern District of Illinois.

BRIEF OF APPELLANTS.

IRA W. BUELL,
SOLICITOR FOR APPELLANTS.

CHAS. M. OSBORN,
OF COUNSEL.

BARNARD & GUNTHORP, LAW PRINTERS, 44 & 46 LASALLE ST., CHICAGO.

And I further certify that the underscoring in testimony is not a part of the original record and is not to be regarded.

WM. H. BRADLEY, *Clerk.*

Endorsed on cover: N. Illinois C. C. U. S. No. 401. Elsie White, James B. White, Mary S. White, Annie C. White, and Ann White, appellants, *vs.* Frederick W. Cotzhausen. Filed October 15, 1885.

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OCTOBER TERM, A. D. 1888.

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Appellants,
vs.
FREDERICK W. COTZHAUSEN,
Appellee.

Appeal from Circuit Court of the United States for the Northern District of Illinois.

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ELSIE WHITE, JAMES B. WHITE, MARY S. WHITE, ANNIE C. WHITE AND ANN WHITE,
Appellants,
vs.
FREDERICK W. COTZHAUSEN,
Appellee.

Appeal from Circuit Court of the United States for the Northern District of Illinois.

NOTE.—The citations herein contained are to pages in the printed record.

STATEMENT OF CASE.

This is a proceeding in the nature of a creditor's suit founded on an indebtedness accruing to Cotzhausen, the complainant and appellee, in the year 1878.

ORIGINAL SUIT.

Alexander White, the judgment debtor, was made a party defendant under the ordinary charges calling for a discovery of assets, and his sisters Margaret White, Elsie White, Mary S. White and Annie C. White, and his brother James B. White, were also made parties defendant; the charges made against them were that Alexander White, being on July 16, 1879, seized in fee of

certain real estate, therein particularly described, for a pretended consideration of $56,859.20, made a deed to appellants, Elsie, Mary S., Annie C., and James B. White, of certain parcels thereof, specifically described, and on the same day another deed of the remainder thereof on a pretended consideration of $14,214.80, to his sister Margaret White. That both of said deeds were made "without any consideration;" that neither of them were "*bona fide* conveyances"; but that both were "colorable and shams, made to defraud appellee"; and that the grantees therein held the property in trust for their said brother Alexander. (4 & 5.)

Answers to Original Bill.

An answer was called for under oath, and all the defendants answered under oath. That Alexander, the defendant, as the administrator of the father Alexander White, Sr., received moneys and securities amounting to over $200,000, of which he appropriated to his own use more than $129,000. That said Elsie, Mary S., Annie C., James and Margaret, were entitled to $71,074 being five-sixths thereof less the dower of Ann White the widow, and on an accounting on the 16th of July, 1879, he was found to be owing to Elsie, Mary S., Annie C. and James B. White $56,859.20, and to Margaret $14,214.80, and in satisfaction of the said indebtedness to them respectively Alexander made and delivered the deeds in the bill described. That the consideration was *bona fide*, and the deeds were *bona fide*, made to pay and satisfy a real and *bona fide* indebtedness to said amounts respectively. (13, 17, 18, 19, 21.)

Amended Bill.

It having appeared in Alexander's answer to the original bill that he had made a note on which judgment had been entered, and had given various collateral securities to his mother, Ann White, for her third, viz., for $43,256.56 of the amount for which he was liable as administrator, appellee filed his amended bill, repeating the charges of the original bill, making the mother a party defendant, and charging that Alexander was not indebted to her, that the note was given without consideration and the judgment was confessed to defraud complainant. (26.)

This bill also alleged that all the defendants constituted but one family, and the estate being undivided, Alexander being administrator, "by the consent of his mother, "brother and sisters," was permitted to manage and conduct the whole of the said property so left by his father for the joint benefit of himself and the other parties, "using, investingand reinvesting the proceeds, rents, issues "and profits thereof as his best judgments might direct, "being the agent and representative of the family in all "matters and things thereto appertaining."

That the debt to appellee was incurred by Alexander "for the benefit of the estate," and of his brother James, "with the consent and concurrence" of appellants, and as "the agent and representative of the family." (31.)

That Alexander represented that he was acting for the benefit of the estate and had authority from the appellants, and appellee believed and relied on this statement. That James, "being informed of the premises," availed himself of the advantages of the contract with appellee and participated therein, and the others subsequently rat-

ified it as made for their benefit, and confirmed Alexander's acts in that behalf. That the alleged accounting in probate was a fraudulent attempt to give an apparent consideration for the conveyances aforesaid and the judgments in favor of his mother; and that if the accounting was not fraudulent, the widow and the heirs should be estopped from setting up an indebtedness of Alexander to them resulting from his dealings as administrator of the estate or as agent for the real property left by the father, against appellee's judgment. (32.)

An answer under oath was waived to the special interrogations which were inserted in the bill.

Answers to Amended Bill.

By stipulation the answers of the defendants to the former bill were taken as their answers to this amended bill, and replications were filed to these answers. (36.)

Ann White, themother, answered fully, alleging the *bona fides* of the accounting, and of the indebtedness on which she took judgment; denying that Alexander had authority to manage the estate for the joint benefit of all in the manner alleged; denying that the contract with appellee was authorized by her or her other children, or ever ratified or confirmed. This answer was sworn to by her. (36.)

Independent Bill.

The issues thus being formed, a great deal of testimony was taken, when, on July 15, 1882, the complainant having obtained another judgment on another note, filed his second bill in the Circuit court of the United States, founded on this new judgment. (43.)

In this bill he repeated, in almost the same words, the charges of his amended bill, making no new charges which affect these defendants. An answer under oath to the charges, as well as to the interrogatories, was waived. (49.)

ANSWERS.

Answers were filed by all the defendants, denying the material allegations of the bill and alleging substantially the same facts as in their answers to the original bill, and Ann's answer to the amended bill, and in addition stating that Alexander, on the 18th of July, 1879, made a bill of sale to Elsie, Mary S., Annie C., and James B. White, of four-fifths of one-sixth interest in certain paintings, which were enumerated, upon the same consideration as that for which the deeds were given, and also transferred to his mother, Ann, the remaining one-fifth interest therein as further collateral to said note. (55.)

CONSOLIDATION.

This answer was also sworn to by Elsie, Annie C. and James B. White, (61.) (and the remaining evidence was then taken in the original case.) April 14, 1884, the two causes were, on motion of appellee, consolidated, and the testimony taken in the first cause was ordered to stand as testimony in the second cause. (64.)

FIRST DECREE.

The cause was heard on the 22d and 23rd days of December, 1884, and taken under advisement, and on the 12th day of January, 1885, a decree was entered, which, among other things, authorized appellee to bring before

the court, by supplemental bill, two additional judgments which he had recovered since the filing of the original bill. (65.)

Supplemental Bill.

January 14, 1885, appellee presented a supplemental bill setting up the two additional judgments, alleging that the fact of their recovery had been proved in the original cause and praying like relief. (70.)

Answer.

The defendants answered, alleging that the deeds and transfers were made in satisfaction of indebtedness exceeding the value of the property transferred, and adopting their original answer; also alleging that a large portion of the real estate so conveyed to them was encumbered by mortgages and taxes. (73.)

Exceptions were filed to portions of this answer, but not acted upon. (76.)

Order and Leave to Amend Bill.

February 28, 1885, the court on its own motion set aside its former decree, and on complainant's motion he had leave to amend his original bill so as to include the two additional judgments, and so as to conform the pleadings to the proof. (77.)

Amended Bill.

On the 16th of March what is styled an amendment to his original bill was filed by appellee, setting up the two additional judgments. (78.)

Answer to Amended Bill.

Defendants answered, and in addition to the former answers set up that besides the amount found due from Alexander to his mother, brothers and sisters, by the administrator's account, there was also due to them other large sums of money received by Alexander from rents of real property and sales of personal property inherited from their father, and that his co-defendants released to him the portion of this indebtedness due to them respectively in addition to the indebtedness due them on said administrator's account mentioned, and that they gave written releases thereof as a part of the consideration for said deeds. (80.)

Decree.

On the same day that this answer was filed, the court entered its final decree, finding that the two deeds attacked by the bill "were made without *adequate consider-* "*ation*, and with intent to hinder, delay and defraud the "complainant as a creditor."

That the bill of sale of certain oil paintings was made "without adequate consideration," and with like intent.

That the note given and judgment entered thereon in favor of Ann White, and the colateral securities given to secure the same were made, entered and pledged without "adequate consideration," and with like intent, and all the conveyances, etc., were set aside and declared void; and the appellee was decreed to have a lien on all the property of said Alexander, and on all that was transferred to his co-defendants as aforesaid, and on a failure to pay the debt, the property conveyed and pledged was ordered sold for the satisfaction of appellee's debt. (82.) From this decree this appeal was taken. (87.)

Errors.

1st. The decree is not supported by the evidence.

2d. The decree is manifestly against the weight of the evidence.

3d. The answers being called for and made under oath, the court wholly disregarded the rule of law requiring the material allegations of the bill so far as denied by the answers to be supported by the testimony of two witnesses or by one witness corroborated by circumstances equivalent in weight to another witness.

Argument.

There are but two theories asserted in these pleadings on which appellee bases his right of recovery against these appellants:

First. That the two conveyances mentioned in the bill, made by Alexander to the heirs, and the note and confession of judgment to the widow, Ann White, were made "without any consideration"; were not "*bona "fide*," but were merely "colorable and shams," and made to defraud appellee, and that the appellants hold the legal title to the property conveyed as trustees for the defendant Alexander White.

Second. That appellants are estopped from setting up Alexander's indebtedness to them, against appellee, because the debt to him was incurred by Alexander for their benefit and as their agent, and that they had confirmed his acts in that regard.

The decree was rendered on another and distinct theory, viz: That the two conveyances and the note on which the judgment was taken were all based on "inade- "quate considerations."

The case developed by the evidence shows a preference given by Alexander to his family in the payment of the debts due to them, and we understand the law to be well settled that a debtor resident of Illinois, although insolvent or in failing circumstances, may prefer one creditor to the exclusion of others, when done in good faith and for a valuable consideration. That this is the law of the State of Illinois, we cite:

Tomlinson v. *Matthews*, 98 Ill., page 178.

Payne v. *Miller*, 103 Ill., page 442.
Eads v. *Thompson*, 109 Ill., page 87.

In the case first above cited the wife of the debtor was the preferred creditor, and the court uses the following language: "The principle that a debtor in failing circumstances may prefer one creditor to the exclusion of others, when he does so in good faith and for a valuable consideration, has been often announced in opinions by this court." We also cite *Bean* v. *Patterson*, 122 U. S. Rep., page 496, where in sustaining a trust deed from an insolvent debtor to his wife, the wife's property having been used by the husband, the court says: "It is sufficient if the "husband was indebted to his wife in the amount men- "tioned. The amount realized therefrom, (the sale of "wife's property), as we read the evidence, was greater "than the sum named in the trust deed as due her. That "deed for her security stands therefore upon full consid- "eration. Had it been given to a third party for a like "debt it would not be open to question that it would "have been unassailable." We deem it unnecessary to cite further authorities on this point.

We contend, therefore, that it is lawful for an insolvent debtor to prefer one creditor to another, and further that it is immaterial what is the relation sustained by such debtor to the creditor or creditors, provided always the debt preferred be real, the consideration adequate and the payment *bona fide*.

Before calling attention to the evidence, we will refer to another rule of law which we believe applicable to this case. The original bill having called for answers under oath, and such answers having been made, denying the material allegations on which relief was prayed, such al-

legations must be supported by the testimony of two witnesses, or by one witness, corroborated by circumstances which are equivalent in weight to another witness.

Southern Development Company v. *Silva*, 125 U. S. Rep., page 247.

Morrison v. *Durr*, 122 U. S. Rep., page 518.

Union R. R. Co. v. *Dull*, 124 U. S. Rep., page 173.

Vigil v. *Hopp*, 104 U. S. Rep., page 441.

Story's Equity Pleadings, Secs. 875–849a.

Upon the questions of fact, we contend that all that the evidence in this case shows is, that Alexander White did give to his mother, brother and sisters a preference in the payment of debts justly due from him to them. That not only is there no evidence to prove either of the hypotheses upon which the bill was based, or that upon which the decree was rendered, but that the evidence adduced by the appellee himself expressly contradicts the allegations of the bill, and also the findings on which the decree is based.

It seems necessary to give something of the history developed by the evidence to understand citations therefrom on particular points. *History.*

In 1872, Alexander White, Sr., died intestate (117), leaving his widow, Ann White, four daughters, Margaret, Elsie, Mary S. and Annie C., and two sons, Alexander, then aged twenty-two, and James the youngest child, then aged fourteen (320). All of them remaining unmarried (135), they have continued to constitute one family (117), though the elder sister, an invalid, has been absent

boarding in Litchfield, Connecticut. In 1876, they sold the homestead (118, 321), but made no substantial difference in the relations of the family to each other. All the family expenses, including the individual expenses of the several members thereof, amounted to about $7,000 per year (118, 121, 130, 139), which was drawn from one source. Alexander, the administrator and agent, drew the money from the bank and paid it to the mother (124), and she paid the expenses as the bills came in and as the individual members desired money from time to time (118, 121, 122, 130), but no account was kept by any one to distinguish what was paid to or for either of the individuals (124, 130, 136, 140). On the death of the father, Alexander, Jr., became administrator of the estate and received personal assets amounting to over $200,000. Afterward he received certain real property in exchange for stock in the Lake Forest Hotel Manufacturing Company, and other real property, in part exchange for the homestead, taking title to same in his own name. He also became the agent of all interested so far as to receive the accruing rents which amounted to from $11,000 (130) to $16,000 (134) per year, and to pay taxes and for repairs on the realty inherited from the father; beyond this he had no authority from them. Neither his mother nor either of the heirs had any business experience, they believed Alexander to be competent and honest (129, 141) and trusted him implicitly, and he never consulted with them, and they had no knowledge of what he was doing (126, 129, 130, 140), except that about 1873 when, conformably to his father's intentions (130), he improved certain real estate, expending about $100,000 in so doing, with their knowledge and consent (123, 141).

In 1878 and 1879 he got his brother and sisters to guarantee or sign notes, which he represented were for the purpose of raising money to pay taxes on the property, and when the crisis finally came they found themselves bound for some $15,000 of such debts. Alexander deposited the moneys received in a Chicago bank, keeping the account in the name of "Alexander White, Administrator," and drew indiscriminately from this account for all purposes, whether personal to himself or not; he kept no accounts but depended on his deposit books, checks, stubs, vouchers, receipts and memoranda, which he carefully preserved (177) from which to make up an account. In 1878 the family concluded to set off the widow's dower and partition the estate among themselves, and a bill was filed for that purpose which was pending when the defalcation of Alexander was discovered. About the same time Alexander employed a man named Driesslien to assist him in making out his accounts and in placing his transactions in book form, and they worked together in a desultory manner from time to time, Driesslien having other business which prevented steady application to this. Some time late in 1878, or in the spring or summer of 1879, (the time being in dispute) (119, 128, 140) his mother and sisters became alarmed and sought from him some account of the affairs which they failed to get (120, 131). They sent for Mr. Barker (120, 131, 140) who had been the father's adviser, and had been employed in some matters in which the estate was interested, but who as to Alexander's private affairs had been displaced by other attorneys (206). Mr. Barker developed the fact that Alexander had been speculating with the funds in his charge and had lost the entire personal estate, and had nothing except his interest as an

heir in certain of the real estate with which to make good his losses. It also appeared that he had mortgaged some of the real property which had been put in his name to the amount of $5,000, and had anticipated rents on other property, had exchanged other lands for stock in the Jennison Heating and Ventilating Company to the amount of $2,000 or more, and had allowed an accumulation of taxes to the amount of over $30,000, besides involving some of the family upon notes which they had guaranteed, to the amount of about $15,000. The family put the younger son, James, in charge of the property, directing that Elsie, the eldest daughter, should with James sign all checks for money drawn from bank (119, 123, 135), and finally borrowed on a mortgage $35,000 wherewith to pay back taxes. Mr. Barker was employed to collect the indebtedness of Alexander. Driesslien with Alexander's aid made up an account which will be found substantially reproduced on page 354, showing that Alexander was accountable for a balance of money including rents of..... $101,880 77

And had assets in his hands belonging to the estate but, up to say May 19, 1879, of 9,210 58

Leaving a net balance against him of 92,670 19

The items entering into the administrator's account were ascertained and an account drawn off and filed in the Probate court which will be found on pages 334 and 335 of the record, showing him indebted as administrator in the sum of..... $ 89,646 05

To which was added interest under the laws of Illinois, amounting to..... $ 40,123 80

Making a total of..... $129.769 85

The words of the statute are as follows:

Sec. 113, chapter 3, R. S. of Ill., 1874. "All moneys, "bonds, notes and credits which any administration or "executor may have in his possession or control as prop- "erty or assets of the estate, at a period of two years "and siv months from the date of his letters testamen- "tary or of administration, shall bear interest, and the "executor, or administrator shall be charged interest "thereon from said period at the rate of ten per cent., or "after two years and six months from any subsequent "time that he may have discovered and received the same "unless good cause is shown to the court why such "should not be taxed."

This account was approved by the Probate court, and he was ordered to pay the widow one-third, or $43,256.61, and one-sixth of the remainder, or $14,418.87, to each of the heirs other than himself. (Rec., 338.) While this accounting was being prepared, the suit for setting apart the widow's dower in the realty and its partition between the heirs was carried to a conclusion, and on the sworn report of the commissioners specific land was set apart to the widow for life, Margaret's and Alexander's portions were set off to them respectively, and the other heirs had theirs set apart to them together. (Rec., 327–333.)

To pay this indebtedness, Alexander gave his brother and sisters, except Margaret, four-fifths of his one-sixth share of certain paintings which had remained undistributed and also conveyed to his brother and his sisters, except Margaret, part of the land which had been set off to him by the partition proceedings, and to Margaret the remainder thereof; and they gave to him receipts in full of all claims against him not only as administrator, but also as their agent in the collection of the rents. (Rec, 121,

137, 159.) To his mother he gave a note for $43,256.61, with a power of attorney to confess judgment, and as collateral thereto the remaining one-fifth of his one-sixth of the paintings and certain stocks, notes and other property which were supposed to be and were in fact worthless. (Rec., 120, 133.)

In the view which we take of this case, the principal question to be determined is: Did Alexander White, being indebted to his mother, brother and sisters, convey to them property of a value in excess of the amount which he owed them? To determine this, let us inquire what the evidence shows: *First.* As to the value of the property. *Second.* As to the amount which he owed them.

The Value of the Property conveyed.

It should be noted that the partition was made in a court of equity on a bill filed and by sworn commissioners, who state that they went upon the land (327) and occupied thirty-five days in making it (332). That no attack has been made upon the fairness of the partition between the parties, although, if it had been unfair, there was every opportunity to ascertain that fact by an appraisal of the property. We therefore assume that the partition was fair, and it remains to ascertain the value of the specific property which Alexander conveyed.

As to the real property deeded to Elsie, Mary S., Annie C. and James B. White.

On inquiry by appellee, Alexander said that in 1869 the value of the several tracts of land was as follows (89, 90):

Lots situated in original town of Chicago, from ..... $20,000 to $25,000

Lots situated in Canal Trustees' Sub., Sec. 27, 39, 14, from ..... 18,000 to 20,000

Totals ..... $38,000 to $45,000

The consideration named in this deed was $56,859.29 (10).

As to the real property deeded to Margaret White, the consideration named in the deed being (10) $14,214.80.

On inquiry by appellee, Alexander said (90) that in 1879 the value of the several tracts was as follows:

Ten acres in the Town of Lake	$ 3,500
Lots in Elston's Add. to Chicago, $3,000 to	4,000
Twenty-five lots in Adam Smith's sub. etc	2,500
Lots in block 61, C. T. Sub., Sec. 7, 39, 14, ... $11,000 to	12,000
The lots in Elston's Addn. and in Adam Smith's Sub. (322) having been conveyed to Alexander in exchange for property of estate, he had mortgaged them for $5,000, (187,355) for his own purposes, and before he testified they had been sold under the mortgage, (199.) This amount should be deducted	5,000
The widow, Ann White, was by the partition decree given a life estate for her own life as dower in the lots in Adam Smith's Sub. and in block 61, C. T. Sub., last named. (329.) The value of this reversion has not been determined by evidence, nor does the age of the widow appear. It could hardly have been worth	

more than two-thirds of the value of the property, therefore deduct one-third, or..... 4,833
leaves value of real property conveyed to Margaret 12,167

Total to all the heirs..... $57,165

Deduct the ratable proportion for this land of the back taxes which were a lien on all the land (148-125), amounting to $30,000, viz. 1-6.... 5,000

And we have for the value of the land conveyed to the heirs..... $52,165

The foregoing was all the evidence concerning the value in 1879 of the real property conveyed, except that of James B. While (159), who, in answer to appellee, testified that the value of the entire property conveyed to himself and sisters was estimated by the three commissioners (who were appointed to divide it) at about $70,000. This was a mistake upon his part, as the commissioners did not, in form, at least, appraise it; but it tends to show his estimate, and corresponds very closely with that of Alexander. (89, 90, 159.) It will, of course, be noted that both he and Alexander are speaking of the entire value of this property independently of the incumbrances.

The appellee also attempted, by both Alexander and James, to show its value when the testimony was taken, but failed, and did not attempt to follow up that line of inquiry, which was clearly improper, in the absence of an inquiry showing its relative value in 1879. It is noteworthy that appellee was content with this evidence of value, and offered no other, while the same was easily accessible, if desired.

Alexander's one-sixth interest in the value of the oil paintings transferred to the widow and the brother and sisters, in part payment.

The expressed consideration for the bill of sale was (164)	$ 1,200 00
Alexander estimates the value of all the oil paintings on the death of the father in 1872 as "about" (203)	12,000 00
He explains how sales and exchanges of some of them were accounted for in settlement of the account. (191, 192.)	
The administrator's account shows that he accounted for sales other than those exchanges, to the amount of (334)	4,769 93
Leaving	$ 7,230 07
He says he sold his one-sixth interest in the remainder to his brother and sisters (103, 207, 335, 337), and turned over the remaining paintings to them as the owners.	
On this estimate the value of his one-sixth interest was	$ 1,205 01
James B. White, in answer to appellee, says: I believe the pictures were considered worth something over $7,000 (164). That was generally understood to be what they were worth.	
The total value of the property, real and personal, transferred to the heirs in payment of these debts to them, on the highest estimates shown by the evidence was therefore	$53,372 00
The value of the property pledged to Ann White, the mother, as collateral security for Alexander's note for	*$43,256 61*

A list of this property will be found in Alexander's answer to the original bill. (14, 15.)

The sworn answer of Alexander says, as to the claims, stocks, bonds, etc., so pledged, that they were "worthless "or of little value." (15.) The same statement is made in the answer of Ann White to the amended bill. (38.)

The only piece of land conveyed to the mother was Lot 10, B. 4, Stone's subdivision, worth as Alexander says, (15–103) about $1,200. Subject to a contingent lien of $1,100.

The evidence shows that the property transferred or conveyed to Ann White, the mother, was of but little value, (103–196, 201–218, 161, 162–165), and it was conclusively inadequate to pay more than a small fraction of Alexander's debt due to her.

Appellee asks Alexander (201) "What was the ob- "ject or reason of giving all your valuable landed in- "terests to your sisters and brother, and a judgment note "with doubtful and trifling security to your mother?"

A. "I know of no other reason than that I owed a cer- "tain amount to them, and Mr. Barker, the attorney, "decided to put it,—to settle it in this way."

Mr. Barker says, (290):

"When the amount was found that Alexander owed "his brother and sisters, I reported to them and told them "that Alexander's property was not of sufficient "value to pay his indebtedness to them, and I wanted to "know how the deeds should be made. I told them that "my estimate of the value of it was that it was not more "than sufficient to pay two-thirds. Mrs. White then "stated to me that I should draw the deeds to pay the

"children, that she would rather have them paid than to "take it herself, leaving Mrs. White without payment, "except the judgment note which was afterwards entered "up."

Appellee asks Mrs. White (132):

Q. "Was his indebtedness greater or less than the 'supposed value of his interest in the estate?"

A. "Greater."

THE AMOUNT OF ALEXANDER'S INDEBTEDNESS TO HIS FAMILY. HIS RECEIPTS.

Mrs. Ann White says: "My knowledge is that at the "time of his father's death he (Alexander) had $156,- "000." (126, 130.)

Some pictures sold amounted to between $2,000 and $3,000.

Elsie White being asked what personal property his father left, says: "I remember we received $60,000 from "Mr. Reed; $30,000 from Mrs. Crouch; either $30,- "000 or $31,000 from the sale of some property on 5th "avenue. We had about $35,000 in bank, aggregating "$155,000 or $156,000." (139.)

Alexander swears that he had, and accounts under oath for amounts received from the sources Elsie speaks of, together with the interest which he collected thereon; on a note, and for condemnation money not mentioned by her; and for personal property sold, in all, $193,501.44 besides the personal property taken by the widow. (203,334.)

Rents.

Mrs. Ann White says that Alexander received the rents. That before the Lake and Franklin, and the 5th avenue buildings were erected, the rents amounted to from $11,000 to $12,000 a year (130); from 1875 to 1879 she thinks they were increased more than $5,000 per annum (134), making $16,000 per annum.

James gives the exact rental in 1879 at $16,326 (149).

Alexander gives the rentals received up to January, 1875, at about $34,000 (188), and the gross rents received by him while he had charge of the estate at $115,189.82. (203, 354.)

July, 1879, Alexander had anticipated rents to the extent of $2,000 (126).

He had borrowed on notes signed by him as administrator, $1,000. (162.)

He had borrowed on a mortgage on real property of the estate which happened to be in his name $5,000, (187, 355). Total receipts, $316,691.26.

Disbursements.

Ann White, the mother, says that the family expenses were about $7,000 per year. (118, 221, 130.)

Elsie White says: "We don't know what the ex-
"penses were."

"Q. Did they, or not, exceed $10,000 per year?

"A. I should think they hardly amounted to that."

Alexander credits himself with $572.60, and $43,176.15 for these expenses (354).

With repairs, taxes paid and expenses of collecting rents.....$ 42,045.80.
With cost of buildings erected on the property (335).....$103,955.39.
Total disbursements..... 189,749.94.

Difference between receipts and disbursements.....$126,941.32.
Money, notes and accounts on hand belonging to the estate (354).....$ 9,210.58.

Amount used by Alexander.....$117,730.74.

Add to this the amount of the notes which he had induced James and some of his sisters to sign under pretense that he needed the money to pay taxes on other indebtedness of the estate, and while they were obliged to pay (148, 149, 162, 163,) $14,109.76.

We have $131,840.50 which Alexander was accountable for, not taking into account the interest allowed on the balance in the administrator's hands.

This corresponds with Alexander's testimony (205):

"Q. How much altogether did you owe them; state "as near as you can?

"A. Over $132,000.

"Q. How do you know that you owed them that "amount?

"A. I knew it from my bank books, checks, receipts, "vouchers, memorandum books and other memoranda, "which I had carefully preserved; also from investments "or expenditures that I made on my own individual ac- "count in various enterprises in which I was engaged.

"Q. In those individual enterprises did you make or "lose?

"A. They were total losses.

"Q. To what extent?

"A. $95,000 and over."

To the above sum of $131,840.50 must be added the interest allowed on the administrator's account	$ 40,123.80
Making a total of.....	$ 171,964.30
From which take Alexander's 1/6 of balance remaining after deducting the dower.....	$ 21,451.28
Leaves due to family.....	$ 150,513.02
Deducting Ann White's dower, which was not canceled.....	$ 43,256.61
And notes guaranteed possibly not canceled,	14,109.76
Leaves amount actually then due, which was canceled by the receipts given on settlement.....	$ 93,146.65

And this is $39,774.65 more than the value of the property conveyed, as a consideration for this debt as above stated.

The account above stated is not a mere estimate or guess, but is an absolute computation of items, the vouchers for which were carefully preserved and were produced on the taking of the testimony, together with a set of books, which served to arrange the items in a convenient form for examination.

In examining Alexander about the making up of the administrator's account appellee asked, (174), "Were "any of the items therein referred to and embraced aver- "aged or lumped, or were they the result and aggregate "of items and figures in that behalf made?" And he an-

swers, "None of them were lumped or averaged, they "were the result and aggregate of items and figures in "that behalf made." (174.)

To the same effect, see page 113.

Alexander (107) says: "My expenditures as admin- "istrator were made mostly by bank checks which I pre- "served, by receipts for the same and by memoranda on "paper, not in book form; I mean on loose slips. My "receipts of money were evidenced by deposits in the "banks." (177 and 205.)

He says he carefully preserved these bank books, checks, vouchers, receipts and memoranda from the time he became administrator. Being called on by appellee, he produces the entire mass of checks, vouchers, receipts memoranda and bank books, except two bank books which were mislaid. (107, 108, 177.) He also produced a detailed statement of the account. (108.) And a set of books showing the accounts between him and the estate, made up by Dreisslien, a bookkeeper from these papers which came down to about the middle of May, 1879. (178.)

Being asked how the administrator's account was made up he says that a statement was drawn off from the books, and from this the administrator's account was made. (174.) The original of this statement having been lost, (175) Alexander attempted to reproduce it (202, 203), and this will be found on page 354.

Appellee's Impeachment of the Account.

The appellee having this entire material for an investigation of the accounts before him, availed himself of it by

examining Alexander concerning the items at great length.

He introduced in evidence (174), and used as the basis of his examination the administrator's account rendered to the Probate court July 21, 1879, sworn to by Alexander (336) and approved and made the basis of the order of distribution by the court (337-38), which showed Alexander's indebtedness to the fund from sources for which he was liable as administrator.... $89,646.05
To which was added interest as above.... 40,123.80

Making a total of.....$129,769.85

Which sum the court ordered distributed as follows:

To the mother..... $43,256.61
To each child, including Alexander..... 14,418,88
Viz: to Margaret.....$14,418,88
To Elsie, Mary, Ann C. and James.....57,675.48

He called attention to the fact that the inventory (210) showed cash received at time of father's death $37,687.25, while the final account showed it to be $41,820.37. Alexander showed the balances in the books amounting to $37,820.35, and says there was $5,000 in money in the house drawn from bank just before his father's death.

He then shows that of this he deposited to his individual credit $2,000, he not then being administrator. It appears that this private account was wholly moneys of the estate and was finally merged in his account as administrator (104), and the remaining $3,000 was paid out in funeral and other expenses, or used by himself and credited to him in his general account, thus entering into the family expense account. (102, 210, 211, 185.)

2. It appearing that $1,503.64 of the Barker and Tuley note was paid in services rendered to the father. He was called upon to explain why it was not credited to him in his administrator's account, and he showed by the items that it was credited to him in his general account. (193, 194.)

3. He was asked why commissions or services were not credited to him, and he answers that they were taken into account in the final settlement with my folks, they having without payment in full, receipted for all demands. (185, 211.)

Undoubtedly the foregoing items ought regularly to have gone to his credit in the administrator's account, but as they were allowed to Alexander in his account as agent, they do not affect the amount of the actual debt from him, except to a slight extent, in increasing the interest charge.

4. The father left stock subject to assessment in the Lake forest Hotel and Manufacturing Company. (185.) Alexander paid $10,903.14 in assessments on this stock with the consent of the family. The company divided its land among the stockholders, thus wiping out the stock. Alexander took title to this land in his own name, whether by consent of the family or not does not appear, and it is not material. He then, without authority, exchanged this land for stock in the Jennison Heating and Ventilating Company, which finally proved a total loss. This stock he pledged to his mother for the payment of the amount he owed her. (186.) Appellee claims that he should have been credited with this $10,903.14. As a matter of bookkeeping perhaps he should, but in that case he should have been charged with the value of the hotel stock or the land which he received therefor and

converted to his own use; instead the short cut was taken of not crediting him with the assessment. In its effect on the accounting this was substantially right, unless he should also have been charged with the value of the stock before the assessment was paid.

It should, perhaps, also be noted that Alexander paid Mr. Barker in land valued at from $500 to $1,000 for services rendered in settling his administrator's account and for other legal services (179–205), but it is doubtful if the estate should be charged with this.

It also appears that Alexander, in the administrator's account, was credited for construction of 5th avenue building—335 ..... $64,178 12

Which should have been only $62,028 12

Amount in excess of expenditure $2,150 00

This excess, Alexander testifies (212), was for estimated cost of further improvements in the building, engine and boiler, etc.

The expense of putting in the elevator into the 5th avenue building was added to the 5th avenue construction account, per final report. There was an open account between C. L. Rice & Co., the firm who furnished said machinery, and the estate. It was not adjusted until after the July settlement. (212.) This, if an error, would but increase the balance due from Alexander, and serves to illustrate the fact that Barker and all the heirs regarded him as owing a much larger amount than was shown by his administrator's account, and therefore the same was not figured down very closely.

There are, we believe, no other points developed which it can be claimed had any effect in impeaching the account on which settlement was made.

And if every point, including the proportion of the heirs in the interest charge of $40,000, should be ruled against the appellants, it would still leave due to them a large amount over and above the value of the property conveyed, and which they released on the settlement.

The result of appellee's careful and exhaustive examination tends to verify instead of to impeach the general account, and it is clear that James and Alexander were correct when they assented that Alexander owed the heirs $15,000 more than he paid. (165, 179.)

Elsie says:

(137) "Q. How were the matters of difference between Alexander and the family adjusted?

"A. He had no ready money, and therefore turned over to us the property that was set aside for him. We agreed among ourselves that if the amount of the value of the property that he made over to us was not equal to the amount he owed us, we would forgive him the rest."

We will now notice the evidence to support the theories set forth in the bill.

1ST. THE CLAIM THAT THE CONVEYANCES WERE NOT GENUINE, OR MADE FOR THE PURPOSE OF CONVEYING THE PROPERTY, BUT WERE MERE SHAMS DESIGNED TO COVER UP ALEXANDER'S PROPERTY AND PLACE THE SAME BEYOND APPELLEE'S REACH FOR THE USE AND BENEFIT OF ALEXANDER.

Upon this point Appellee called for an answer under oath from all the defendants to the original bill, and he was answered that "They were made for a prior existing debt, due to appellants, and that they did not hold "the property in trust for Alexander."

Upon these two facts, at all events, viz: that there was a pre-existing debt, and that there was no secret trust, their answers are conclusive, unless contradicted by two witnesses, or what is equivalent thereto. All of the defendants called to testify, sustain fully the sworn answers, and the evidence is clear and complete that all the family absolutely released Alexander from this indebtedness to them respectively, (159,) amounting to more than the consideration of the deeds, and far more than the value of the property conveyed, and that they do not hold the property, or any of it in secret trust for Alexander.

The evidence, which it is supposed tends to impeach their answer and their testimony, is that Alexander, since the conveyances, when at home has been treated as a member of the family; though the mother says "she does not "have the same feeling for him as for the rest of the children, "and that she supposes she discriminates in her conduct and "action more than a mother should;" (133, 134) and the further fact that out of the general fund belonging to the mother and other heirs they have doled out to Alexander, from time to time, small sums for his personal expenses and his board, incurred while he was at the law school, or attempting to earn a living in New York, amounting in all to $1,628.75, in a period of two and one-half years, keeping an account of the same. (155, 156, 91.) This the family say was a mere act of kindness to their brother, and not the performance of any obligation to him. James testifies: "We are under no obligations or "agreement to pay him money. I give it to him, not "because I owe him, but because he needs it, and because "he is my brother." (161.) It may here be noted, that Alexander, without specific reward, has assisted his

brother in making out leases and such similar matters, for which he is supposed to be fitted by reason of his having studied law and attempted to practice it in New York.

2d. THE CLAIM THAT ALEXANDER HAD POWER TO AND DID BIND THE PROPERTY WHICH HE HELD FOR HIS MOTHER, BROTHER AND SISTERS, FOR THE PAYMENT OF THE DEBT TO APPELLEE.

The appellee gave credit to Alexander, and no other member of the family, and he has taken judgment at law against him and no one else.

Appellee's attempt to prove that Alexander had powers of attorney to act for the family was an entire failure. (183, 125.)

His attempt to prove that Alexander had implied power to invest and reinvest the funds of the estate, in business enterprises or otherwise, resulted in proving: That he had their consent, in 1873, to carry out the plans of the father in expending $100,000 in erecting buildings on some unimproved property. (123, 130.) That he had their consent to pay assessments on the Lake Forest Hotel and Manufacturing Company, to preserve that from forfeiture. (189.) That they concurred in the exchange of some paintings, in which all were interested, and in the purchase of some others. That in 1878 and '79 he got some of them to sign his individual notes to raise moneys, under pretense of needing present money for payment of debts and taxes of the estate, alleging that he was behind in the collection of rents. (163. 164.)

It entirely fails to show any authority to deal with the funds in his hands, either by loaning them or otherwise, much less by embarking in business for their benefit.

Appellee, however, succeeded in most conclusively proving that Alexander did not consult his family or inform them of his speculations, but kept all his business concealed as far as possible, especially from his mother (101, 102, 109, 129, 199, 216, 167), taking even extraordinary precautions for preventing the facts appearing, by putting property purchased into third person's names; and that in no single instance did they participate in, or, so far as appears, know, until long after, of any of his operations by which, as he says, he lost more than $95,000.

As an instance of Alexander's dealings with the property of the estate, appellee puts in evidence his attempt, through Guyton, to exchange lands belonging to the estate for this oleographic stock. A list of the lands which he offered to exchange is given on page 353. One of these tracts does not appear to have ever belonged to the estate; the other three were lands which Alexander held in his own name in trust for the heirs (320 to 333), and could convey without their knowledge. If he had been dealing with their consent, he would probably have offered some of the numerous tracts of land which would have required their deeds to convey, so the effect of this evidence is that Alexander contemplated a further breach of trust.

The entire case of the appellee rests on inferences which are sought to be drawn, while the testimony of the witnesses and all the documentary evidence directly contradict those inferences. It would seem as if appellee considered his suspicions as equivalent to actual evidence.

As we recall it, the only direct evidence he introduced on any point relates to the supposed interest of the family in the Oleographic Company, and consists of a single statement made by Thurber (240), who had in effect

been appellee's clerk in the Oleographic Company before Alexander White became interested, and was also in effect appellee's clerk when he testified. (238.) He says that at the time the company's property was moved to Chicago (September, 1878), which was five or six months after the purchase from appellee, a difference arose between Mr. Peak, the mover, and Thurber about $100, part of the expense of moving, and that James then said to Peak: "That the business was the property of him-"self and sister. I understood him to say sister, that he "would be responsible for any difference." (240.) On cross-examination he says: "That was the only time that "I even remember of hearing him make such a statement." (245) The examination of this witness was remarkable for its leading character and the effort to force him to say that he knew James had an interest, but is too long for repetition. It resulted in proving that James was acting as a clerk at his brother's request, and not as a proprietor.

Appellee introduced Peak (268), but only got him to say that James said, "I will see that you are paid." His subsequent statement that he don't know why James interfered, unless he was part owner, is not evidence, and would prove nothing if it were, for James' motive is sufficiently apparent (269).

From Pereless (270) also introduced by him, he got absolutely nothing, except that a Mr. White was introduced as being connected in some way with the company.

Thurber in his statement must have misunderstood, have forgotten what James said or wilfully misrepresented. It occurred some three years before in a conversation in which the question of proprietorship was not involved. There was no possible reason why James

should have announced his and his sister's ownership. All he was called upon to do was to guarantee the bill, and this he did.

If he had claimed to be an owner, he certainly would in the years which followed, when as Thurber says he was in frequent consultation with him on the subject of this company's affairs, have let fall something to show that he claimed to be a proprietor. (Rec., 240, 245, 246, 247.)

This testimony is in contradiction of all the evidence of all the witnesses, Alexander, James and Ann White, all testify in substance that Alexander was the only person interested. He bought the stock. He told his mother long after it was purchased, that he had an interest in it, and tried to get her consent to the family being interested, and failed. (Rec., 96, 97.)

James was of but twenty-two years of age, and had no business experience, not even having assisted his brother in the management of the affairs of the estate. (Rec., 171). He says he knew Alexander was interested in the company, but not the amount of his interest. (Rec., 151, 153, 166, 169.) And that he took very little interest in the affairs of the company. (Rec., 169, 152).

As to the transaction which involved Alexander in this present debt:

Appellee proved by the mother that Alexander after the purchase of the stock proposed to her that the family take an interest in it, as it would furnish a good tenant for the 5th avenue property and give James an opportunity to learn something of business; saying also that he, Alexander, had a small interest himself; and that she absolutely and unqualifiedly declined to have any-

thing to do with it. (126.) Alexander's account of this is as follows (96, 97, 216):

"I said to my mother I thought that an excellent business "opening was offered for my brother Jim and a good "tenant for the 5th avenue building," and that "she said "that she would have nothing to do with the matter, and "told me to have nothing to do with the matter, meaning "by matter the purchase of this particular property."

"Q. Did she tell you not avail yourself of the excel-"lent business opening which was offered for brother "James?

"A. She did, and very emphatically, too.

"Q. Did she tell you not to avail yourself of the "excellent opportunity which was offered you to secure "a good tenant for the 5th avenue building?

"A. She did, and very emphatically."

The complainant, Cotzhausen, attempted to make his case by a bill of discovery; the sworn answers defeating this, he called as witnesses all of the defendants except Margaret, and attempted to prove his case by them. He also introduced in evidence the partition proceedings, the account rendered in the Probate court, and, indeed, substantially all the evidence except the reproduction of the account found on page 354, and the trust deed to Quinlan found on pages 355 to 360, and two exhibits which were not material, besides the testimony of the defendants and the documentary evidence which we have referred to, there was nothing offered throwing any substantial light on the issues.

The examination of Alexander occupies about seventy pages of the printed record; but the great mass of the testimony is devoted to the history of the Oleographic

Company, and to an attempt to show that Alexander's conduct in the creation of the debt and the subsequent treatment of appellee was not what fair dealing required.

We are not advocates or Alexander White, and do not propose to attempt an analysis of the testimony in this respect, because it would be extremely tedious and eminently unprofitable. It is sufficient for us to say that none of the family knew of or took part in these transactions: that when Alexander undertook the management of the estate he was but twenty-two years old, apparently devoid of business experience. That he early fell among sharpers who took every advantage of his inexperience to get from him what he held in trust. That one of his uncles, McMicken, took a most unconscionable advantage of him by forcing him to take a lot of worthless land titles and worthless stock at the price of $3,800 in order to get a loan of $5,000 in cash.

That another uncle, Reid, was borrowing money of him, and finally got him into a speculation in Protection life insurance stock, apparently for the joint benefit of both Alexander and himself, by which Alexander lost a very large sum of money.

Even the appellee would have difficulty in justifying what he did, viz: The taking from Alexander, for part of the purchase-money of stock in this oleograph company, the money which he held as administrator, appellee is a lawyer who knows that an administrator has no right or power to speculate with the funds of the estate, whether for his own benefit or the benefit of the estate. Certainly not without the consent of those interested in the estate. He knew that this money was drawn from bank by checks signed by "Alexander White, Administrator," for he has taken pains to prove it (105, 238), and yet he took

this money, believing as he says, that it was the funds of the estate without an attempt to ascertain by what authority Alexander acted. Nor does his conduct in having this Oleograph Company sign as surety notes given for the purchase of its own stock by an individual, and then bringing a pressure to bear on the stockholders, by attaching the property of the company for the payment of the debt, commend itself to the ordinary legal mind.

The fact is apparent that Alexander was not only inexperienced, but that he went wrong and abused the confidence whichh is mother, brother and sisters reposed in him. He was conscious that he was wronging them, for he concealed from them his misuse of the money, and, especially, from his mother, all his speculations as far as it was possible to do so; and the appellee has proved this by a mass of direct as well as indirect evidence.

We have thus fully collated the testimony bearing on the chief questions of fact involved to enable this honorable court more readily to determine the same.

We earnestly contend that the positions herein taken are supported by the law and the evidence, and that the equities of this case are with the appellants.

Respectfully submitted.

IRA W. BUELL,
Solicitor for Appellants.

CHARLES M. OSBORN,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1888.

NUMBER 129.

ELSIE WHITE, JAMES B. WHITE, MARY S. WHITE, ANNIE C. WHITE AND ANN WHITE, APPELLANTS,

VS.

FREDERICK W. COTZHAUSEN,

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

JOHN C. SPOONER,
ENOCH TOTTEN,
Counsel for Respondent.

Supreme Court of the United States.

OCTOBER TERM, 1887.

NUMBER 401.

ELSIE WHITE, JAMES B. WHITE, MARY S. WHITE, ANNIE C. WHITE AND ANN WHITE, Appellants,

vs.

FREDERICK W. COTZHAUSEN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

RESPONDENT'S BRIEF AND POINTS.

(REFERENCES ARE TO MARGINAL PAGES)

SUMMARY OF RECORD.

CREDITORS BILL.—On April 9, 1885, the respondent obtained a decree of the United States Circuit Court, Northern District of Illinois, Hon. Walter Q. Gresham, Circuit Judge presiding, adjudging to him $27,842.22, and decreeing, among other things, certain conveyances of real and personal property, which were made by Alexander White, the judgment debtor, in and about July 1879, to his co-defendants (mother, brother and sisters) to be void, because:

Without adequate consideration and made with intent to hinder, delay and defraud creditors.

The sum awarded as above was the aggregate of four several judgments, entered as follows:

Superior Court, Cook County,	Jan. 11, 1881 . . .	$7,211.80
" " " "	March 9, 1882 . .	7,061.44
Circuit Court, Cook County,	March 23, 1882 . .	4,297.83
" " " "	March 25, 1882 . .	4,564.49

The written obligations, on which said judgments were recovered, date back to February and August, 1878. (Page 382.)

Originally there were two suits commenced, which, later on were consolidated by order of Court (177). The first creditor's bill was filed in State Court, August 8, 1881, after return of *fieri facias* on the first judgment above mentioned. The bill prayed, aside from the usual discovery in such cases, that two certain conveyances of real estate, made by the judgment debtor to his younger brother James B. White, and his four sisters, Mary S., Elsie, Annie C. and Margaret, under date of July 16, 1879, for a pretended consideration of $71,074.00, be adjuded void as to the complainant.

After answer, this suit was removed to the United States Court (72), where in view of certain disclosures, made by the answer of the judgment debtor, leave was obtained to file *an amended bill*, making the mother, Ann White, an additional party defendant, because it appeared that *almost simultaneously* she had obtained, under date of July 21, 1879, an assignment from the debtor of *all his remaining assets*, accompanied by a note and warrant of attorney, payable *one day after date* for $43,256.56, on which a judgment by confession was entered on Sept. 4, 1879, thus securing to her upon the records a prior judgment lien (75). The amended bill will be found at pages 75-100. Mrs. White appeared and in answering pursued the same line of defense, adopted by her children, to which more extended reference will be made hereafter. The answers of the other defendants, as originally filed in State Court, were adopted by stipulation as their answer to the amended bill (105). Replication was in general form (103).

On July 15, 1882, after return of *fieri facias* on the second judgment above mentioned, the respondent filed another original bill against the same parties in the United States Circuit Court, Northern District of Ill., framed substantially like the amended bill in the other case, but somewhat more positive in its allegations, because followed by a motion for an injunction (124-137). In this second suit Alexander White made default; all other defendants appeared and again answered the bill (159-172). We are not aware of any material difference between the answers in the first and second suits, unless it be that at this later stage, a bill of sale became for the first time disclosed of Alexander's interest in certain valuable oil paintings, to his brother and sisters, under date of July 18, 1879. Otherwise the issues are substantially alike.—Our replication will be found at page 175.

The two suits (as already stated) were afterwards consolidated. Complainant's proofs closed Dec. 1, 1883; the defendants were given until June 1, 1884, (page 177). The hearing was had Dec. 22-23, 1884, when the cause was taken under advisement. (178).

On January 12, 1885, an interlocutory decree was entered in favor of complainant (179), awarding to him *the relief prayed for*,

which covered the first two judgments, above referred to, and also granting leave "on reading and filing the affidavit and petition of the complainant heretofore presented and filed, and after hearing counsel for both complainant and defendants, to bring before the Court, by way of a written statement in the nature of a supplemental bill, the two additional judgments, recovered in the Circuit Court of Cook County, *since the filing of the original bill.*" (183).

This supplemental statement will be found at pages 190-194. *In point of fact*, it contained *nothing new*, as these two additional judgments, the issue and return of execution thereupon, the origin and date of the original indebtedness and all other material facts relating thereto, were already part of the depositions on file, introduced without any and all objections, commented upon by counsel on the hearing and considered with other evidence by the Court. (Examine Depositions: Summary of judgments, etc., marginal page 382); also 195 and 213).

When this supplemental statement was filed, some of the appellants attempted, under the pretense of answering the same, to *reopen* the former issues (199 204); but, pending a motion to expunge their answer from the record on account of frivolousness and impertinence, the Court *of its own motion*, on February 28, 1885, (of the December term of Court) vacated the former interlocutory decree and all proceedings subsequent thereto, and granted the complainant leave "*to further amend his original bill*," by including therein the above additional judgments of March 1882, "*so as to conform the pleadings to the proofs*" (208); which amendment was filed accordingly (210).

The final decree of Court, from which this appeal is taken, bears date April 9, 1885. It will be found at page 220. It does not differ from the interlocutory decree of January 12th, except in that *it reserves a right of redemption* after sale and includes the two last judgments, because in the opinion of the Court "they ought in justice and equity also to be provided for, in doing complete justice between the parties and in granting final relief herein," (121).

PLEADINGS AND ISSUE.

As already remarked, the pleadings in the first and second suits are not materially at variance. All of them are verified, although an answer on oath was waived. (94, 141). The following table may prove convenient to the Court:

First Suit, Comp. amended bill	Marg. pages	75-100
Answer of Alex. thereto	" "	33-45
" " sisters and brother	" "	47-62
" " Mrs. Ann White	" "	106-117
Second Suit, Comp. original bill	" "	123-153
Joint answer of Alex's relatives . . .	" "	159-171

CONVEYANCES SOUGHT TO BE AVOIDED.

1. Deed of real estate by Alexander to his brother James B. White and his three sisters, Elsie, Mary S., Annie C.—July 16, 1879 . . . . . consideration $56,859.20
2. Deed of real estate by Alexander to his sister Margareth—July 16, 1879 . . . . consideration $14,214 80
3. Bill of sale of valuable oil paintings by Alexander to his sisters and brother (166). July 18, 1879, ... consideration 1,200.00
4. Assignment of remainder, real and personal, by Alex. to his mother, as collateral to note and warrant of attorney, one day after date. July 21, 1879, ... consideration 43,256.56
5. Judgment lien in favor of Mrs. Ann White, obtained by confession on the aforesaid warrant of attorney, Sept. 4, 1879 . . . . . amount 43,807.50

It is conceded throughout the case that the above conveyances covered *all* the debtor's property, "which was of value" (Alex 309, 250). "He had nothing further to give" (James 297).

DEFENDANT'S ANSWER.

The judgment debtor and his co-defendants in answering the complainant's bill, account for the above conveyances by pleading an indebtedness, which is said to have accrued to them from the judgment debtor *by his mis-appropriation of* $129,000.00, which (with other funds) came to his hands *in the year* 1872, when appointed the *administrator* of the estate of his deceased father. It is alleged that of the amount thus mis-appropriated five-sixths (less the widow's dower), viz: $71,074 belonged to Elsie, Annie C., Mary S., Margaret and James B. and $43,256 56 to his mother; that he had an accounting with his brother and sisters on July 16, 1879, and with his mother on July 21, 1879, when the above balances were found to be due and owing, and that the aforesaid conveyances and transfers were made in satisfaction of said indebtedness, etc., (36-38).

Thus presented itself at first upon the record, in answering the complainant's bill, the defendant's version of these conveyances; and we confess that, when we commenced to take their depositions, it was found to be well supported by a multitude of writings, amongst which were even the records of a Probate Court and a decree in partition. The defendants labored exceedingly throughout the early part of their examination to impress upon the Court and ourselves a line of defense, which be summarized, in almost may their own language, as follows:

THEORY OF DEFENSE.

Alexander, the oldest son, became in 1872, the administrator of his father's estate, which was very large; he remained administrator until July 1879, *without ever accounting.* During all this time the

mother and children constituted one happy family and dreamt themselves to be possessed of plenty of means. Alexander was *as innocent in this belief* as the rest. They all kept house together; no one married and "*no account whatever was kept, as to what the family or anyone individually used.*" "*All moneys went into one common fund; all alike, one share with the other.*" (Mrs. White 269).

All at once, *towards July*, 1879 a small check given by Alexander to mother White, for the purpose of paying Clybourn Bro's butcher bill, is thrown out by the bank; Alexander "*becomes very nervous and does not want to talk much.*" So Mr. Barker the *old friend and legal adviser*, is sent for; "he investigates matters and *he discovers for the first time*" that all the riches dreamt of in bank, are unfortunately gone; that Alexander has lost all the estate's ready cash and some more, in speculations; that the taxes for a number of years remained unpaid, and that *Alexander is a defaulter* to a very large amount. (Thus testifies Mrs. White, 262, 265, 267; James B. 297).

Accordingly Mr. Barker is intrusted with the whole task of "*protecting the heirs.*" (270). "We put it all into his hands. *We* means the whole family." (Mrs. White 261). A *partition* is ordered followed by an accounting *in probate*. Mr. Barker attends to everything; what *he says*, is promptly done by every body; "*no questions are asked,*" *and consequently no reasons can now be given*; "*he knows, we do not.*"

The administrator on the settlement of his account in probate, *brings himself* in debt to his mother and co-heirs $129,769.85. The *pretended defalcation was really but* $89,646.05; but in order to bring it up to the amount required, the administrator liberally adds $40,123.80 *interest* for four and one-half years at 10 per cent., *by virtue of the statute*, and this trifling addition (in his verification at page 442) he is pleased to call "*a proper charge.*"

Examine final account in Probate, 441–444.

In the mean time the real estate was amicably partitioned. Alexander's one sixth, as set off and appraised on partition, is estimated at about $70,000; this is less than what the defaulter owes to his relatives. What then is more natural, than that Alexander should convey all his real estate and oil paintings to his brother and sisters in settlement of their claim, and to his mother all his remaining assets, consisting of notes, accounts, stocks and interests in outside real estate, accompanied by a judgment note, due one day after date, for $43,256.56? What is there wrong in Mrs. White's entering up a judgment against him, "*when she found out*" that her collaterals were "*perfectly worthless*, that she *could not collect a cent*, and that *all of value* had been given to his brother and sisters?" (Mrs. White 262½, 273). And why should this importune complainant and other creditors now be permitted to complain, when the next relatives *equally suffered*, if not more?

Such was the theory and line of defense. But as we proceeded to examine closer and further into the facts, what a cobweb of machinations, inconsistencies and falsehoods became disclosed !— However before we review the evidence, let us call attention to a feature of complainant's bill, which will tend summarily to illustrate our version of this family settlement, viz :

MATTER OF ESTOPPEL.

Anticipating the above defense and by way of estoppel, the complainant inserted in his bill the following matter:

"And your orator further shows, that he is informed the said defendants will claim and insist that upon an accounting at or about the time of the various conveyances above referred to and of the execution of said judgment note, the defendant, Alexander White, who was the administrator of the estate of his deceased father, was found to be indebted to his co-defendants, his sisters, brother and mother respectively, by reason of property, real and personal, that is said to have come to his hands and possession as such administrator prior to said date, belonging to said estate; and that said transfers and other obligations were made in satisfaction of such indebtedness, to them respectively found to be due and owing. But your orator avers and alleges in that behalf that for a number of years prior to the first day of February, A. D. 1878, Alexander White acted as the administrator of the estate of his deceased father, and *by the consent of his mother, brother and sisters* (all of whom continued to live together and constituted but one family and household), *the estate was left undivided and* he, said *Alexander White, was permitted to manage and conduct the whole of said property*, so left by his father, *for the joint benefit of himself and the other parties* therein interested as aforesaid, using, investing and reinvesting the proceeds, rents, issues and profits thereof, as his best judgment might direct, being *the agent and representative of the family in all matters and things thereto appertaining.* That towards the first day of February, A. D. 1878, with a view of securing *a good and permanent tenant* for a certain building, known as No. 83—87 Fifth Avenue, city of Chicago, in which the said estate and defendants were interested, and which then yielded but very little income and revenue, as well as for the purpose of *obtaining a good business opening for the above named defendant, James B. White, his younger brother*, with the consent and concurrence of his co-defendants herein, he, the said Alexander White, *as the agent and representative of the family*, and while acting as administrator of the estate as aforesaid, *incurred the indebtedness*, on ground whereof the complainant's jugdment was recovered, and avowed in negotiating with this orator that such contracts and obligations were concluded by him for the benefit of such estate and that he was duly authorized by his co-defendants in that behalf. That your orator, believing said Alexander White to be authorized so to act on behalf of himself and co-defendants, and having confidence in the statements so made and relying thereupon, parted with valuable interests on the faith thereof, to wit: with personal property, amounting upwards of twenty-five thousand dollars, taking and receiving in payment thereof (amongst others)

obligations of said Alexander White, defendant herein, on ground whereof this judgment was recovered. That within a short time thereafter the defendant James B. White, well informed of said premises, *availed himself of the benefits and advantages by said contract offered and obtained*, and personally participated therein, and that, as your orator has been informed and believes, the other defendants *subsequently ratified* the contract as made for their benefit and confirmed all acts and doings of said Alexander White in that behalf. That having had the control and management of said estate in the manner aforesaid, for a number of years and having acted as the agent and representative of the family in that behalf, it was found and ascertained towards the year 1879, that *by unforeseen occurrences and miscalculations heavy losses were likely to ensue to the estate, unless* the payment of obligations, incurred by said Alexander White in and about the business and management of said estate and trust fund, *could be settled upon him* personally and the estate freed from all liability on account thereof, and, as your orator has been informed and verily believes, *towards that end accountings* between said Alexander White and his co-defendants *were then and there had* or pretended to be had, whereby and on ground whereof *it might be claimed and asserted* that he, as administrator, was justly and truly indebted to his sisters, brother and mother in large amounts, in satisfaction of which pretended indebtedness *he then could properly transfer and convey* all and singular the property and estate, outstanding in his name and subject to seizure on execution.—But, however the fact in this regard as to such accountings and indebtedness may be, your orator insists that by reason of the aforesaid premises the defendant, Margaret White, Elsie White, Mary S. White, Annie C. White, James B. White and Ann White, in justice and equity *ought not to be permitted to assert, as against your orator*, that the indebtedness, on ground whereof this judgment was recovered, was not contracted by said Alexander White *as their agent and representative and for the benefit of their joint estate*, or that they were *bona fide purchasers from said Alexander White for a valuable consideration*, or that Alexander White at the time of such pretended accountings was *actually indebted to them* in manner and form aforesaid; and again, Ann White in justice and equity ought to be *estopped* from asserting that she obtained as against your orator the judgment note in question in good faith and for a valuable consideration, or that Alexander White upon an accounting was actually indebted to her as above asserted, or that she now has a valid and subsisting lien as judgment creditor, anterior and prior to the lien and equities of this complainant."

FINDING—EXCEPTION—APPEAL.

The opinion of the Court, as announced from the bench, was broad and exhaustive, covering all material issues in the case. We cannot understand why the defendants, if they intended to appeal, did not cause the same to be made a part of the record and to be returned to this Court.

We are aware of *but one exception*, which is noted at marginal page 468.

The defendants' proofs were closed on June 1st, 1884, and the cause was set for hearing. During the argument, in open Court and *for the first time* (Dec. 22, 1884,) the defendants offered in evidence a trust deed from Alexander White to one Quinlan, dated Sept. 1, 1877, but not recorded until August 29, 1878, covering some of the property in Thompson's and Adams Subdivision, which he afterwards pretended to convey to his sister Margaret. This property belonged to the estate of his deceased father or rather to the heirs and widow as tenants in common. It had been taken in exchange for the old homestead, and "*for the convenience of the parties*" title had been vested in Alexander White, who held the same *in trust for himself and co-heirs* (see record in partition suit at marg. page 421). On making partition, the above mortgage or trust deed *was utterly ignored* and this property (among others) set off to Alexander (434).

The defendants also offered in evidence in connection with said trust deed, some documentary proof, tending to establish that this mortgage towards October, 1879, was forclosed by trustee's sale.

The Court refused to receive the papers in evidence and we shall not spent time in discussing the exception, because it is evident that

1. The ruling of the Court was discretionary.
2. The papers were not proper evidence in the form presented.
3. The proofs were utterly immaterial to the issue.
4. The evidence was but cumulative to what Alexander had testified to before.

It may be well to notice that in this appeal neither the judgment debtor nor his sister Margaret join (Appeal bond 479—480).

All the defendants originally *prayed* an appeal (237), but for some unascertained reason two of them failed to conform to the order of Court. We supposed the rule in this Court to be well settled that "all the defendants, affected by a joint decree, should join in the appeal; and if any of them refuse or decline on notice, the others should then be permitted to appeal."

Masterdon vs. Herndon, 10 Wall., 416.
Todd vs. Daniel, 16 Pet., 521.

EVIDENCE.

One Alexander White, a resident of Lake Forest, died intestate on March 18th, 1872, leaving him surviving his widow Ann W., and six children, the defendants in this suit. His estate was very large; it was variously estimated at a million two hundred thousand dollars and even more, (pages 413,369,385); most of it consisted of real estate; there was personal property, outside of such as belonged to the family residence or home, as follows:

Cash on hand at time of decease, . . .	$37,687.25
Asa D. Reed's note, ...	61,000.00
Caroline E. Couch note, ...	30.100.00
Tuley & Barker, three notes, ...	2,700.00
	$131,487.25

Inventory filed in Probate, July 17, 1872, page 441.

The defendant, Alexander White, who was his oldest son, became administrator. His mother and sisters (Elsie and Mary S.,) on April 6th, 1872, signed as sureties his official bond in the penal sum of $300,000 (page 326). Nothing more was done in probate for seven years thereafter; the estate remained undivided; the mother and children continued to constitute one family and household; no one of them ever married.

ONE FUND, NO BOOKS, NO ACCOUNTINGS.

For all financial purposes *there was but one fund;* No account books or memoranda were *kept as to what was received or disbursed,* either for purposes of the *estate generally,* or for *family and individual use.*

"No books of any kind were kept whatever during my administration of the estate, neither by myself or any other member of the family. Expenditures were *mostly* made by checks on banks, receipts of money by deposits in same." (Alex. 251.)

Q. "Did you during these years, and while you were acting as administrator, keep any books, outside of what you stated as to bank accounts and checks?"

A. "No sir—no books at no time. I kept no memorandum book." (Alex. 252.)

"We decided to have Alexander show his books (spring 1879), but he had none—did not keep any." (Mrs. White 262.)

"The household expenses were paid by checks to the order of the parties keeping an account with the family; family expenses were met mostly by checks payable to the order of myself or bearer, I generally drawing the money and giving it to the family, as they asked for it. I mean by family expenses, money, as any one of the family might desire, either mother, sisters or brother." (Alex. 251, 328.)

To the same effect is the testimony of Elsie 278, and Mrs. W. 264.

"There are no separate accounts kept. All is defrayed from the estate. It has been that way ever since my husband died." Mrs. W. 264; Elsie 278.)

"Not even receipts were given, while Alexander was administrator, for cash used by the family or household." (Mrs. W. 264.)

ALEXANDER ACTS AS GENERAL AGENT AND TRUSTEE.

There were no debts to be settled of any account (334), consequently the duties of Alex. as administrator were very limited. But in addition thereto, by common consent of all the members of the family, he was authorized and permitted to act, during all this time from 1872 to 1879, as the agent, representative and trustee of his mother and co-heirs (324, 328) and with their knowledge and

assent he transacted all business appertaining to the estate, the purchase and sale of real and personal property, the letting of premises, the investing and re-investing of funds (342) as in his judgment deemed best, using—"*for convenience sake*"—mostly his own individual name.

HIS AUTHORITY IS BROAD AND GENERAL.

All his doings were implicitly assented to. He was allowed to do as he pleased. He was not even in the habit of consulting. All matters, outside of the household were left entirely to Alexander and never questioned.

Of this fact there can be no doubt under the evidence. Alexander throughout his examination has to concede that he acted as administrator, agent and trustee for the estate, his mother, brother, sisters and himself. (Alex. 326, 251.) He had "entire control of the entire assets of his father's estate." (Alex. 340.)

And as to his co-defendants we beg to quote:

"I managed the household for all of us. My son Alex. managed the outside matters most of the time. He had charge of everything outside of the household—financial and all—until 1879. He had charge for seven years; until all the children had become of age." (Mrs. White, 261.)

Q. Was Alex. in the habit of conferring with you or other members of the family in regard to business matters or the management of the estate?

A. No.

Q. Why not?

A. He thought we had confidence in him.

Q. Did you at all times allow him to do as he pleased?

A. Yes, we did.

Q. Did you or other members of the family ever have reason to repudiate or go back on any arrangement or contract which he made for you or the estate?

A. No.

Q. What caused you and Alex.'s brother and sisters to have so much confidence in him and to allow him to manage the whole estate, as he saw fit, without consultation or conference?

A. I cannot give any other reason than that we trusted him; we knew he was sober and not given to any fast living. (Mrs. White, 268.)

To the same effect is the testimony of Elsie, 277, 278, 275.

Q. Do you mean to say that your mother had never before (1878) interfered in such matters and your management of the estate?

A. Never before.

Q. Or your brother and sisters?

A. None of them ever—never.

Q. Why was this?

A. I could not say.

Q. Give us some reason?

A. I know of no other than that they thought I was managing the estate for their best interests. (Alex. 246.)

We shall see hereafter that Alex. freely used the broad and unlimited authority so conferred upon him by his mother and coheirs, and that until but a short time prior to the making of the alleged fraudulent conveyances, he was allowed to hold himself out as authorized to act in their behalf.

Munson, 368.
Silvermann, 388.
Cotzhausen, 343, 344.

HE USES HIS OWN NAME, ALTHOUGH AGENT MERELY.

As already stated above, while so acting for himself and coheirs, he most generally used and signed his individual name.

"It was done for convenience sake, merely." (Alex., 314.)

"The receipts for rent were signed by me individually." (Alex., 252.)

According to Mrs. White (page 264), Alexander not only collected the rents, but gave the leases in his own name, the same as James does now.

"The leases were made in my name—I believe the greater portion of the estate—by the advice of my attorneys, Barker & Wait, also the firm Barker, Buell & Barker.

Q. What reason was there for so acting and advising you ?

A. They gave no reason. I obeyed orders.

Q. Did you know their reason for so advising you ?

A. I did not, never asked them, they being our attorneys—I mean the estate's attorneys." (Alex. 252.)

Q. Now what is the reason that you took and executed the leases relating to the estate in your individual name ?

A. I have already answered that question. It was *by instructions* of the estate's attorneys—I mean the firm of Barker, Buell & Barker.

Q. And do you mean to have us believe that you never asked them the question, why they so instructed you ?

A. I do not remember of doing so.

Q. Did it not excite your curiosity to know why you should do so ?

A. I do not remember that it did.

Q. Were you in the habit of following the instructions of Mr. Barker, without asking questions in matters of the estate ?

A. In some matters I was, and some matters I asked questions about. It depended on the matter.

Q. Explain, if you please, the nature or difference of these matters, when you asked and when you did not ask for his reasons in giving instructions ?

A. When the matter in question was simple, like making leases, I thought no more of it than to follow his advice. I remember when the matter of contesting taxes came up, involving (as it did) some $30,000, we talked about the advisability of contesting the same." (Alex., 253.)

Elsie thinks (page 276) that in executing leases Alex. signed, as administrator. He had no power of attorney or other written authority. (275.)

"He was considered the business representative of the estate and heir to 1-5 or 1-6 thereof—his individual signature was never questioned."

Munson, 368.

"We do it because we are all often away, a thousand miles away from here, and it is more convenient.

Q. Has that always been your custom ?

A. It always has been." (Mrs. White, 263-264.)

ILLUSTRATIONS.

Among the many instances of agency, we cite by way of better illustration, the following:

"He was authorized to put up two buildings," (Mrs. White, 264;) "the family all consented." (Mrs. White, 272.)

The construction of them was commenced soon after his father's death. There was expended on them $103,955.39. (Report, page 441.) The contracts were made in the name of Alexander, as administrator. (Alex., 320.)

He paid by consent of his mother, sisters and brother, $10,903. 14, by way of assessment on stock to Lake Forest Hotel and Mfg. Co., (Alex., 314).

N. B. Please examine administrator's final account in Probate and ascertain (if you can,) where he has credited himself with above item?

The stock in the Lake Forest Hotel and Mfg. Co. was exchanged March 10, 1875, for city property. For convenience sake, title was taken in Alex.'s name, (314).

This real estate was again exchanged for stock in the Jenison Heating and Ventilating Co. When in 1879 Alex. gave the judgment note to his mother, he assigned the stock interest so acquired to her, (314).

He also loaned about $8,000 to the Lake Forest Hotel Co., at 10 per cent. interest, (315-317).

The Lake Forest Homestead was traded off to one Thompson in 1876 for a dishonored note of $5,000 and some city lots of trifling value (315). Title to the lots was taken in Alex.'s name, (James, 288-289). Lands, which came to the family about the year 1880, in settlement of the above note, were deeded to mother White, because the heirs considered that a proper way to have it done, (289).

He bought in April, 1878, for the estate, an oil painting from Gustav Reinhardt, for $3,500. He turned in seven of the family paintings at $2750, and paid the balance in cash. (Alex., 319.)

Again in July, 1872, we find him buying two oil paintings from one Shaughnessy, at $400. (Alex., 319.)

At another time he exchanged some oil paintings for two volumes of photographs valued at $400. (Alex., 319.)

It is almost useless to call attention again to the fact that all of these sales and payments were home affairs, and as such brought to

the attention of the family circle, but they seem to have been considered so trifling that in asking *credits*, on accounting in probate, no mention thereof is made, although the old family cow, calf and pig are assigned prominent places. (319-441.)

> In 1877 and 1878 he is in search of some lithograph establishment, because he wants a permanent tenant for the family building on 5th Avenue, and a business opening for James. He tells Guyton so (Alex., 245, Guyton, 384,) and authorizes him to negotiate with Schober & Carqueville, offering real estate of the family in trade. (Guyton, 384½.)
>
> When failing in this, the same offer is made to complainant. (Guyton, 384.)

About 1876 Mr. Lind bought "*for them*" 80 acres of land in town of Lake at $400 per acre, (Lind, 413, 414, 415). Title was taken in Sylvester Lind's name, who was a friend of the family and frequent visitor at the house, (414). The money was paid by checks on the Trader's Bank, where the administrator's account was kept, (416). It was money belonging to the estate, (Alex., 337). Alex. took from him a quitclaim deed, which did not, however, go upon the records, (414).

> Q. "Did you not repeatedly state heretofore that the title to this land was taken by you in trust for Alexander White and other heirs of the estate?
>
> A. Well, I don't know whether it was or not; I might have said that—I might have thought it was for that—he might have told me. I cannot tell; it was a good while ago." (Lind, 415.)

A similar state of facts we find in regard to other real estate, the Jefferson and State street property. It was bought with the money of the estate, but title taken in Uncle McMicken's name, (337). In 1879 the State street property was deeded to mother; the Jefferson ¼ block to Bro. Barker. (Alex., 338.)

> An interesting statement of moneys loaned out between 1873 and 1875 will also be found at page 340. Mrs. White's *brother*, John Reed, seems to have been the most prominent and most delinquent debtor. Are we really to understand that these notes represented Alex. W.'s individual losses?

The partition proceedings (pages 421–422) expressly recognize the fact that on various sales and purchases of real estate Alex. acted *as trustee* for himself, widow and co-heirs, and that he was permitted to use his individual name "*for the convenience of the parties.*" (421—"convenience" is misprinted "conveyance.")

NO ACCOUNTINGS EVER HAD.

Thus was the estate, real and personal, managed until about July, 1879. No accounting or settlement was ever had or even called for.

Q. "Did you ever have any accounting or settlement with the estate before that time?

A. No, never.

Q. Why not?

A. I never thought of it." (Alex., 253.) "We had perfect confidence in Alex., and I supposed that everything he did was all right." (Mrs. W., 261.)

"There had been no accounting; neither do I remember that the administrator refused to settle." (James, 300.)

CONDITION OF ESTATE DURING CRISIS.

We all recollect the crisis of September, 1873. It broke upon the country about the time when the two costly buildings on 5th avenue and Lake street approached their completion, and the cash was exhausted. That the estate of White did not escape its effect, any more than other property, we may fairly assume. Most of the property was unproductive, and the newly erected structures are shown to have badly suffered for want of tenants, *owing to the dullness of the times.*" (James, 272.)

DULLNESS OF TIMES—RENTS.

In the absence of books of account the most searching examination could elicit but general estimates from the interested parties as to the receipts and expenditures of the estate. Mrs. White tells us that the gross income prior to building was between $11,000 and $12,000 (page 269), and that the erection of the two buildings increased the rents—at least at times. But is it natural to presume that the general "dullness of the times" proved a full offset to whatever increase may have arisen from building?

Beyond a question the evidence does establish that even up to 1878, the 5th Ave. family building was for the greater part vacant, and that extraordinary efforts had been made to procure other and permanent tenants, to which fact we shall particularly refer hereafter.

HOMESTEAD—ELEPHANT.

The homestead at Lake Forest, with its extended grounds and hothouses, also proved an "*Elephant,*" (James 288.) "*It was rather expensive keeping up; there was two or three large greenhouses on it; that is, I understood, the reason they sold.*" (Lind, 413.)

Q. Mr. Barker at one time, while examining a witness here, called it an "elephant."

A. That showed it was expensive to keep it.

Q. Do you think he was correct in that assertion?

A. I do not think that was *the worst story ever he told; I think he came pretty near the truth.* (Lind, 413.)

The details of expenses, as given at page 315, leave no doubt as to the correctness of Lind's views: "*It was very good property, if a man had plenty of money to spend on it.*" (Lind, 412.)

Consequently, although it was the family home and inventoried in Probate at $30,000, we find it slaughtered in May, 1876, *for a nominal figure.* Yea, a dishonored note of $5,000 made by one Robert McClelland and overdue since summer of 1873, was considered even more desirable property than said "elephant." (315–316.)

TAXES IN ARREARS.

The taxes and assessments also remain unpaid and costly litigation ensues in consequence thereof. In 1879 the amount due was over $30,000; some of the property had been sold for taxes and had to be redeemed by paying a large percentage. (James, 284.)

EXPENSES AND LOSSES.

While thus the construction of the two buildings, the continued dullness of times, and general condition of things, do not seem to indicate a surplus of ready means—yea, not even an increased rental income—the estate was constantly subject to heavy drafts for commissions, repairs, improvements, and the many expenditures and losses incident to a bulky estate, which depends altogether for its income upon the permanency and solvency of its tenants, not to speak of the expenses of extended litigation and the support of the family. For example:

> The commissions on collection of rents were 5 per cent. At first Barker and White attended to the business. They received from May 6, '72, to May 7, '73, a percentage of $591.19. (Alex., 311.)
>
> The bank book (Exhibit 5) shows the Trader's National Bank to have attended to the collection of rents continuously from March 1, '75, to close of book, Nov. 30, '77. (Alex., 311.)
>
> Later on the rents from suburban property were collected by various agents, some of whom proved unfaithful. (312.)

It is almost useless to direct attention again to the fact that when losses occurred by defaulting agents or worthless rent accounts, Alex. charged himself with the difference and never sought credit, when credit ought to have been given.

Triumph Planing Machine Co.	(page 317)
C. L. Rice & Co.	(" 330)
D. H. Mason	(" 317)

Barker & Co. also drew heavily upon the estate for legal fees. We beg to refer to a few discovered items by way of illustration:

Sept. 19, 1872,	Bill rendered (page 320), . . .	$1,503.64
March 4, 1876	Legal services (page 308), . .	500.00
April 10, 1876		500.00
Sept. 8, 1876		200.00
June 19, 1877		100.00
July 13, 1877		150.00

Other and further illustrations will be found thickly strewn throughout the record.

PERSONAL EXPENDITURES.

As to family expenses, we have already shown that no account or memorandum was kept. Mrs. W. estimates that about $7,000 passed "*through her hands*" per year (261). "That is mere calculation. I said about that. I figured it up in a light sort of way; not close, I mean." (Mrs. White, 263.)

Elsie adopts a somewhat higher standard, (276).

> Q. "State, as near as you can, what were the annual expenses of the whole family per year from 1872, the time of the death of your father, up to July, 1879?
> A. We do not know what the expenses were.
> Q. Did they or did they not exceed $10,000 a year?
> A. I should think they hardly amounted to that."

In such estimate the individual expenses of members of the family are evidently not included. In order to illustrate how freely they drew for personal expenditures, see the checks on page 257:

No. 1—May 15, 1872, Mary S.	$100.00
June 21, 1872, Elsie	350.00

From the examination of Elsie White (page 274):

> Q. "How much money have you drawn from the estate for individual purposes since 1872 and up to July, 1879?
> A. I cannot tell.
> Q. Give us a general idea, within $1,000, more or less.
> A. I can give you no idea.
> Q. Who can give us some idea, if you are not able to do so?
> A. *No one, that I know of.*

Neither can Annie tell, within $1,000, what she did use. Never kept an account or memorandum of any kind, (258).

We also find a number of them engaged in traveling east and south, and take it for granted that they paid for this pleasure.

> "I stayed at home while I had one. A portion of this time we have boarded in New York. It was about June, 1876, until Sept., 1878, I boarded in New York. My sister Mary was with me continually. My mother, brother James, and sisters Mary and Annie were there together until (I think) Oct., 1877. They then went south, my sister Mary and myself remaining in New York. My brother James remained a portion of the winter of 1877–1878 in Chicago." (Elsie, 274.)

Mrs. White testifies that she did not return to Chicago until July, 1878.

> Is it unfair under these circumstances to assume that $10,000 per year was hardly sufficient to maintain in good standing a family of seven grown persons who were in the habit of gratifying expensive tastes and enjoying the luxury even of a family carriage?

FALLACY OF DEFENDANT'S THEORY.

Considering all these circumstances, the conclusion seems to be irresistible that while the crisis lasted and up to 1878–79, the whole income of the estate was hardly sufficient to meet the current

expenditures; at all events we cannot be made to understand by what sort of tactics or mathematics the estate could have accumulated a large surplus of ready means in bank, as is pretended by the defendants. And, although the defendants now come forward and pretend that until the *dishonor of the butcher's check* in the early summer of 1879, they believed themselves to be possessed of a vast amount of cash, and that they were utterly taken by surprise when it was ascertained that there were no ready assets in bank, and that they were astonished to find even the taxes to be unpaid; still, we cannot possibly harmonize such childlike innocence with the facts and probabilities of the case. Yea, we are obliged to go further:

DEFTS. BELIEF IN A LARGE CASH SURPLUS IS A PURE FICTION.

Because we find all of them more or less borrowing money from friends, relatives and brokers at suicidal rates ever since the year 1876!

This fact of borrowing money accidentally leaked out—after a long and tedious examination of Alex., Annie C., Elsie, Mary and Mrs. White, the key being derived from James B. White's cash accounts, and for many days of searching inquiry—and until July 13, 1882, the same was carefully concealed upon the record.

But again we shall let the evidence speak for itself in the order in which it was elicited.

From Examination of James B. White, July 13, 1882—pp. 283-284.

Q. "In what condition did you find the estate when you took charge of it?

A. I found it several thousand dollars in debt for back taxes, and with a balance in the bank of $335.00 and a note held by the bank—two notes of $500 each.

Q. *Is that all as to the condition of the estate at that time you find worthy of note?*

A. *That is all I can think of.* — —

Q. Whose notes were those in bank—$500 each?

A. They were signed by my brother as administrator.

Q. When were they given?

Objected to.

A. The spring of 1879, I believe. I have the notes yet on file at the house. I suppose my brother got the money on these notes from the bank. I do not know what the money was used for.

Q. *Did you take up and pay these notes; if so, why?*

A. *I did. I don't remember the reason. We thought it advisable to do it.*

Q. Why?

A. I said I did not know why—what for.

Q. What other debts, notes or obligations, contracted by Alex. White, while he was in the management of the estate, did you take up or assume?

A. A note of Lazarus Silverman of $1,089.76, on Aug. 7, 1879. given for money borrowed by Alexander White. *I don't remember how it was signed.*

Q. Why did you take up and pay this note?

A. *I don't remember the reason.*

Q. Who told you to do so?

A. I don't recollect that anybody told me. I do not know what was done with the money borrowed on that note. The next is a note of $2,080 including interest, which I took up Aug. 19, 1879, given by *my brother, myself and two of my sisters*, to L. C. P. Freer. *It was represented to us that it was to pay the expenses belonging to the estate.* I do not know that the particular nature of the expenses was stated to us by Alex. The note, I think, was for six months. Myself and sisters signed it at Alex.'s request.

Q. What was the reason or occasion of his requesting you and two sisters to join him in this note?

A. I suppose because Mr. Freer required it.

Q. Why were such expenses not met in cash or by Alex.'s individual note?

A. I don't know. I never asked him at that time.

Q. The next debt, note or obligation?

A. On Sept. 6, 1879, we took up a note of $2,140 including interest, given to James Smith by *my brother, myself and two sisters*, given for a year, in Oct., 1878, *for same reasons as the Freer note.*

Q. What were the reasons or occasion of your joining in this note? Why was the obligation not discharged in cash?

A. I suppose Mr. Smith required our names. We did ask questions about it of my brother, what he wanted it for. *He said he wanted to use it to pay debts of the estate.* We had confidence in him, so we signed the note. No further questions were asked nor explanations given.

Q. *Any other debts, notes or obligations?*

A. *That's all.*"

James B. White, July 14, 1882—Page 288.

Q. "Did you bring those joint notes with you which you spoke of yesterday?

A. I did not think of it—was not requested to.

Q. Give us the names of your two sisters that joined in those notes?

A. I believe it was Annie and Mary.

Q. Why not the other?

A. One of them was East (Margaret). I do not recollect whether Elsie was East or not, and if not, *I do not recollect the reason she did not sign together with the others.*

Q. *Why did your mother not join?*

A. *The same reason that I gave for Elsie.*

Q. There was then no particular reason or objection on their part, as I understand you?

A. *None that I know of.*

Q. Were any of these notes so given by yourself, brother and sisters ever *prolonged or extended?*

A. *I think not.*

Q. *Did you or your sisters conceal the execution of these notes and circumstances attending the same, from your mother?*

A. *I can't remember that we did.*

Q. *What did your mother and sister Elsie say as to these notes?*

A. *I haven't any recollection of what they said.*

Q. Did they or any of them ever object to assuming payment of the notes so given as a proper obligation of all of them ?

A. *They never made any objection.*"

James B. White, July 15, 1882—Pages 295-296.

Q. Have you brought with you the notes spoken of yesterday ?

A. I have, and now produce what I have got—all except one. Notes offered in evidence :

June 17th, 1879—60 days after date, judgment note $500, Alex. White, admr., to the Trader's Bank of Chicago, interest 10 per cent.

June 12, 1879—60 days after date, judgment note $500, Alex. White, admr., to the Trader's Bank of Chicago, interest 10 per cent.

Oct. 3, 1878—one year after date, promissory note $2,000, Alexander, James B., Elsie and Mary S. White, to James Smith, of the City of Buffalo, State of New York, interest 7 per cent.

Aug. 20, 1878—$2,000 judgment note, Alexander, Mary S., Annie C. and James B. White, to L. C. Paine Freer, on or before one year, interest 8 per cent. semi-annually. Endorsed, $80.00 ; 6 months interest paid to Feb. 20, '79.

Witness testifies further that the note of Lazarus Silverman he cannot find. Alex. gave Silverman the note of C. L. Rice & Co., as (I think), collateral security to Alex.'s note, and I think his note was *guaranteed by some member of the family.* We were under some legal obligation to pay it. The notes were left with the receiver of C. L. Rice & Co., by me, and I think he mislaid them, that is all. The original date of Alex. White's note I do not remember. *I have no recollection which ones of our family were on the note.* The written statement I now produce is all that I can find relating thereto.

[Statement offered in evidence.]

Q. "Is there not some other note or notes given by Alex. White that your family assumed? Try to refresh your memory ?

A. I recollect of only one other note given by my brother and myself, sometime during 1878, after June 1st, to W. L. McMicken or Sarah McMicken, for $8,800. It was given for part cash, part coal lands, and some quarry bonds or stocks, as I have since found out.

Q. Has your family assumed the payment of this ?

Objected to.

A. I am paying the interest notes regularly, as they become due, out of the family fund. The rate of interest is 8½ per cent. The note runs for ten years after date.

Q. What other security does McMicken hold for said note, if any ?

A. Nothing.

Q. *Why did you not refer to this note on your examination yesterday ?*

A. *Because I did not remember at the time,* and did not notice any payments in my book, as far as I looked.

Q. Is not the payment of interest under date of Oct. 17, 1879, conspicuously appearing from your account book, covering $365.37 interest on note of S. McMicken up to Sept. 17, 1879 ?

A. Yes, it is on the book.

Q. Please tell me how you came to sign this note of $8,000, ten years, at 8½ per cent., with your brother?

Objected to.

A. Sometime during 1878, my brother came to me and wanted me to sign some notes. I asked him what he wanted to do with them. He said that he was a little behind in the collection of rents, and as taxes were coming due he needed money to pay them with. He represented to me that the *money was to be used entirely to pay taxes due on the property of the estate.* I asked him who he got the money from. He said: "Never mind, you would not know who it was if I told you." I supposed that he would use the money as represented to me by him, so I signed the note.

Q. Why did you not tell him to go to your mother or older sisters?

A. Because he requested me not to do so.

Q. For what reason—what did he say?

A. He said he didn't want my mother to know as it might worry her, and he requested me to say nothing to my sisters *as they would probably tell my mother.*

Q. Was this the *first note* or obligation of Alex. White's which you signed your name to?

A. *I believe it was. I am quite certain it was the first, and given before the other notes.*

Q. How long after signing this note of $8,800, was it that yourself, Mary S. and Annie C. signed another with Alex.?

A. I cannot say. I haven't any recollection. It wasn't a year, I don't think.

Q. How did you and sisters come to sign the other note—the note of Aug. 20, 1878, for $2,000?

A. I answered once before the same question. Alex. came to us, and requested us to sign the note. We asked him what for. He said *he wanted to get money on it to use for paying debts of the estate.* We had confidence in him, and believed he would do as he said, so we signed the note.

Q. Why did you not tell him to go to your mother?

A. I do not remember that my mother was *at home*, and if she was at home, *I do not remember the reason we did not go to her.*

Q. How did you and sisters come to sign the note of Oct. 3, 1878, for $2,000?

A. My brother came to us and asked us to sign the note. He said he *wanted to use the money for estate matters.* We signed the note; that's all.

Q. Why did you not tell him to go to your mother?

A. I do not remember why.

Q. How did you and sisters come to sign note of Lazarus Silverman? State circumstances.

A. I have no recollection that it was signed by myself or sisters, but presume it was, as *it would not have been paid by us unless we were under some legal obligation to pay.*

Q. Have you ever assumed or seen any notes or obligations on which the name of your mother appeared?

A. No, sir, I am quite positive I have not.

BORROWING MONEY ALL AROUND.

This testimony proved the entering wedge to a new field of disclosure. The fact had to be conceded that as early as the month of August, 1878, the various members of the family knew the ready means to be exhausted, and an urgent necessity to exist to loan money on joint notes at large interest *for purposes of the estate.*

That Mrs. W. did not, alike with the others, join in the notes, is accounted for by her continuous absence from Chicago, (James B., 288). Possibly the true condition of things was purposely withheld at first from their mother. "*as it might worry her,*" (James B., 295). The testimony on this point is rather unsatisfactory and conflicting.

Compare James B. at 288 and 295.
Alexander, 325.
James B., at 298-299.

But however that may be, when Mrs. W. learned that notes had been thus signed, she was somewhat "displeased," but did not say anything that even left an *impression* on James' mind, (299).

And the family never objected to meeting any of these notes out of the common fund. "*We thought it advisable to do it, do not remember why.*"

James B., 299, 288, 284.

As we further progress, we shall however see that such loaning dates back to a much earlier date: that the stringency of financial matters was known throughout the whole circle of family and family friends, and that James B.'s statements are exceedingly colored and unreliable.

From Alex. White, August 2, 1882—Pages 321-325.

Q. "Now is it not a fact, that as early as the month of October, 1878, your family knew that you were short in your accounts?

A. I do not think so, as I did not know myself.

Q. Did not your family at that time know that your pecuniary embarrassments had caused you to solicit and obtain the joint signatures of your sisters and brother to various monetary obligations?

A. I couldn't say that they did.

Q. Did you inform Mr. Cotzhausen (when he, one day, shortly after the removal of the lithograph business to your building in Chicago, met you in the shop of the Company) that your uncle had been with you for several weeks on an accounting, and that it seemed as if your head was all whirling?

A. I don't remember of it at all.

Q. Did your uncle at any time assist you in your accounting or figuring?

A. No, sir; I don't think he was in this city at all for a year or two from the time you speak of. If you refer to————.

Q. What do you refer to?

A. If you refer to my uncle, Mr. Reid, of Chicago, he had not been in the city for two years.

Q. Did any of the others (uncles) assist you?

A. No, sir. I never heard of such an accounting as you speak of. I don't know what you refer to or mean.

Q. *What did you borrow the $8,800 for, on note of yourself and brother to McMicken?*

A. *It was principally to raise money to pay Mr. Cotzhausen.*

Q. When was it?

A. Latter part of August or 1st of September, 1878.

Q. Why did you not give that money to Mr. Cotzhausen?

A. *I did give him a good deal of it*—all there was due him at the time.

Q. Was this on account of the payment of $5,000 which you spoke of as having assumed?

A. Yes, sir.

Q. Who is this McMicken?

A. My uncle in Aurora.

Q. How did you come to borrow this from him?

A. I wanted money, and because he had it.

Q. Did you ask him for it or did he offer it to you?

A. I asked him for it.

Q. Please state in detail the circumstances.

Objected to.

A. There are no peculiarities, no particular circumstances that I know about it.

Q. Can you not tell us in brief whether you went to Aurora, and how you applied for the money; on what ground and security; in short, the details of this transaction?

A. I remember of going to Aurora and applying to Mr. McMicken for some money. I know of no other way of answering than what I have stated already. I wanted money. *I offered* as extra security to my own name, my brother's. We talked about the time, the amount, the rate of interest, and finally decided on it.

Q. Did you tell him what you wanted the money for?

A. I don't rememb r as I did particularly. He never asked me.

Q. Did you have the note in your possession when you first went there, signed by both of you, or when was it executed? Explain in detail.

A. No, sir; it was executed by me while I was there. I took it to Chicago. He executed it then, or guaranteed it, I don't remember which.

Q. When was this? Give us the date. Refresh your memory by your books.

A. About September, 1878.

Q. Can you not refresh your memory by your books as to the precise date?

A. I don't think it is in my books. I don't see it.

Q. How much money did you get from McMicken on this note in cash, and how was the balance of the loan settled for?

Objected to.

A. Over $5,000 cash. I can't say exactly. I have a memorandum of every cent of it. The balance was acre property in Will Co., Ill.; some stock in the Au Sable Quarry Co.

Q. *Is that the same stock and lands which you conveyed to your mother in July, 1879?*

A. *The same stock, but not the same land.*

Q. What became of the land?

A. I still have it.
Q. *What is it worth?*
A. *I don't think it is worth anything to me.*
Q. Why did you not dispose of it before?
A. *Because I considered the title imperfect or not good.*
Q. What was its estimated value at the time at which you took it on such loan?
A. I think it was something like $600. It may have been $300.
Q. What was the stock worth?
A. It may have been worth 50 cents on the dollar, in the aggregate, $3,000.
Q. Did you know this quarry before you took that stock?
A. Yes, sir.
Q. *How much have you ever realized on that stock?*
A. *Nothing.*
Q. What is the reason that you so invested in it at this time.
A. Well, Mr. McMicken *did not care to hold it longer*, and as an *extra inducement* to make the loan *I offered* to buy from him if, instead of taking cash, he would put it in a note.
Q. What interest did the note bear?
A. I think 8½ per cent. per annum.
Q. Why did he not loan this money to you, when you were at Aurora and before your brother had signed?
A. That was part of the contract, to have my brother sign it. I think, by the way, he did let me have $1,000.
Q. Is it not a fact, that already at this time, a good deal of your paper was in the hands of brokers and other parties in Chicago, which did not find a ready market?
A. I don't remember as to that time or amount.
Q. Did you not go to Aurora because you could not obtain the loan at Chicago?
A. I don't know as I tried to obtain such a loan in Chicago.
Q. What for did you, on Aug. 20, 1878, give the note of yourself, Mary S., Annie C. and James B. White, to L. C. Paine Freer?
A. If I gave such a note at that time, it was *to take up another note that had become due.*
Q. *When was the first given, what for and by whom?*
A. I don't remember as to the time; it was to take up a *similar* note, if I remember rightly, given by, *I do not remember the parties. I do not remember how many of my sisters and brother were on it.*
Q. *How often in this way was such loan or note of $2,000 renewed?*
A. *I don't remember.*
Q. To what time does the first origin of this loan date back?
A. I don't remember. I think I have all the memoranda.
Q. Can you not refresh your memory as to these notes to Freer from the books before you?
A. I don't find it in the books.
Q. Was the first note of those so given to Freer for cash loaned?
A. No, sir.
Q. What for?
A. Mr. Freer held a mortgage on a piece of property that I

bought, of the amount of this note in question. The note became due, I couldn't pay it. He extended it for me another year. I couldn't pay it then. He re-extended it on condition—no, no, that's wrong—if I remember, all this is, as I remember it. He agreed to give up the note and mortgage if I would give him a note, *with some of my folks' guaranty.* I did so, and he assigned the mortgage to a Mr. Graham, of Chicago. He was selected by me *as trustee for my folks, who signed the note.* His business at present is an inventor. I think he devotes his time to inventions. His place of business is, the last I heard of him, in Boston. His first name I do not recall.

Q. Who is holding that note and mortgage now, or is acting as his agent?

A. *He assigned it to my brother. I do not remember the time.*

Q. Now to what time does the signature of your folks on this Freer paper and the trust assignment to Graham date back?

A. I don't remember the day or year. The papers will show themselves.

Q. What for did you give jointly with James, Elsie and Mary S. White, on Oct. 3, 1878, a note of $2,000 to James Smith?

A. For borrowed money.

Q. How did said note come to be executed?

Objected to.

A. I wanted money, and I induced my folks (or whoever of them who did unite therein) to unite with me on the note in question. James Smith is a resident of Buffalo, N. Y. I wanted money and I asked for it at Buffalo.

Q. State the substance of your conversations and how you came to apply to him—the details of this loan?

Objected to.

A. I thought he had money to loan, I wanted some money, I asked him for it. He said he would let me have it—he loaned it to me. He said he would let me have it on my security *and some of my folks.*

Q. Did he know you and your folks?

A. He did.

Q. Had there been any relation or acquaintance between you before?

A. Yes, sir, I had known him for a number of years.

Q. What was his relation to your family?

A. *He was a friend and an acquaintance.*

Q. *Had you been visiting each other before?*

Objected to.

A. *Yes, sir.*

Q. Where was the note executed by your folks, and when?

A. In Chicago, October, 1878, on my return from Buffalo.

Q. Why did he not loan the money to you on your own note?

A. Because it was so much better security.

Q. Had he loaned money to yourself or family before?

A. Yes, sir; he loaned money to myself before.

Q. When, where and how much?

A. $1,000 at Buffalo, Oct. '77, on my note. No other.

Q. How did you come to borrow this $1,000?

A. For the same reason before stated, as to the other loans.

Q. Can you refresh your memory as to this $1,000 of Oct.,

1877, or the joint note of Oct., 1878, by the account books before you ?

A. As I borrowed for myself, my own purposes, I did not enter it on these books as was my custom.

Q. Am I to understand that these account books before you show no individual transactions and relate only to your doings as representative of the estate and family ?

A. No, sir, they show my receipts and expenditures.

Q. Individual or otherwise ?

A. Both, *as administrator and as the agent of the family.*

Q. What were these moneys of James Smith used for ? What was done with them ?

A. I don't remember.

Q. Can you give us any idea ?

A. I know I used them on my own account.

Q. Did you give any securities to your folks for their signatures ?

A. No, sir.

Q. Do you mean to say that James Smith is no relative of the family, and only *a particular friend of the house?*

A. Yes, sir.

Q. To what time does such friendship date back ?

A. *Many years—ever since I can remember.*

Q. *Did it in any way excite surprise with McMicken, Smith or Freer, when you applied to them for money or extensions?*

A. *I do not remember that they expressed any particular surprise.*

Q. Did it in any manner excite surprise with your brother or sisters when you requested their joint signatures on the notes, or assigned your note and morgage in trust for them, to Graham ?

A. I think as I remember it, *they were surprised as to some of the notes*, but I told them it would be all right, and they would never hear any more about it.

Q. What did they say when asked to sign a *renewal* note ?

A. As to the Freer note, I told them that it was sufficiently secured. They hesitated to sign it, but I told them it was all right, and not to be afraid of any trouble about paying it when it became due.

Q. Why did you not ask your mother to join in some of this paper ?

A. I did not want my mother to know anything about it.

Q. Why not ?

A. I feared she wouldn't permit the others to sign it or them, and the fear would make her nervous and anxious, and that she would ask too many questions about the notes. *I remember being exceedingly careful not to let her know anything about them.*

Q. *Did you enjoin silence or secrecy upon your brother and sisters?*

A. *Yes, sir ; I remember of doing so.*

From Alex. White, Sept. 6 1882—Pages 332-333.

Q. " Explain to us the origin and nature of the Silverman note and loan?

A. As I now remember, it was this. C. L. Rice & Co. desired money. I also desired money. The said firm made a note. I guaranteed the same. Silverman discounted it. The proceeds

went to both of us. I do not remember the proportion. The note was *guaranteed by members of my family,* I believe ; at least they were held in some way legally bound to pay in case the firm or myself did not.

Q. State the amount and date of the note so given?

A. I have no memorandum with me here concerning it. My present recollection is that it was for about $2,500 or more, for perhaps 60 or 90 days. Some part in the summer of 1879 it was dated—perhaps May or June.

Q. Who discounted it with Silverman?

A. I did.

Q. What did you do with the money ?

A. As I stated, a portion of it went to C. L. Rice & Co., a portion to myself. I couldn't say where my portion went to, whether as a loan to the American Oleograph Co., or whether to take up other notes of mine on maturing or what. I couldn't say definitely at present where the money went to.

Q. I want to know how much of that money C. L. Rice & Co. got, and how much yourself ?

Objected to.

A. I haven't any idea.

Q. Which one or ones of your family guaranteed that paper ?

Objected to because previously asked and answered.

A. I do not remember the particular names. It can be easily ascertained from the note.

Q. Under what circumstances and on what plea did you obtain the signature thereto of members of your family ?

Same objection.

A. I do not remember the particular circumstances.

Q. If not the particular circumstances, give us some general idea as to whom you approached on the subject, and how ?

A. I don't remember about this particular note.

Q. Had the signature of members of your family, by this time, to paper of yours, become so frequent and common a transaction that it left no more impression on your mind and present recollection ?

A. This question recalls to my mind that I said they would never hear anything more about it—that C. L. Rice & Co. would pay it, as they had assured me of that fact."

Having in this manner elicited the testimony of the interested parties, we naturally called upon the several payees of said notes, in so far as available, and ascertained the following further facts of interest:

Uncle McMicken.

His wife is Mrs. White's sister. He lives at Aurora, Ill. The Whites borrowed from him as early as 1875, seventy dollars, (316).

Alex. commenced borrowing money from McMicken on his individual note as early as Nov. 18th, 1874—one thousand dollars. Again, Nov. 13th, 1875, one thousand dollars. On January 1, 1876, these notes were still unpaid and consolidated into a new loan of $6,000, which was finally paid on May 1st, 1877, (McMicken 397). All these notes bore 10 per cent. interest, (401).

On Sept. 17th, 1878, Alex. and James B. gave him a joint note for $8,800. The interest was 8½ per cent., (322, 397).

N. B. This money was borrowed principally and used to pay first installment to complainant on purchase of stock, (Alex. 321). James wanted a business opening, as will be fully shown hereafter. But the history of this loan is too interesting not to be given in full. The wealthy borrowers had to submit to an enormous "shave," and their necessities must have been very urgent indeed, when they submitted thereto. While agreeing to pay 8½ per cent. for 10 years on $8,800, they received but $5,000 in cash and the balance in worthless trash—lands with no title and stock of a company at the verge of bankruptcy. "McMicken did not want to hold it any longer, and as an *extra inducement* to make the loan, I offered to buy it from him." (Alex. 323).

But we prefer to let McMicken speak for himself:

From Uncle McMicken—403-405.

Q. "How did Alexander White come to ask you for this loan in September, 1878?

A. He knew that I had it in hand and he came out there to Aurora, probably five times, to try and make the loan.

Q. What made him come out five times?

A. Because we didn't care much about loaning to anybody at that time, we had some other project in view for the use of the money.

Q. What interest did he agree to pay?

A. Somewhere about 8½ per cent.

Q. What did he want the money for?

A. I don't know.

Q. Did you make any inquiry?

A. I did not.

Q. Did he not tell you he had bought a lithographing business at Milwaukee, and that he needed this money to pay the first installment?

A. No, he didn't, but he told my wife that it was to pay taxes on the property of the estate.

Q. Did your wife persuade you to make this loan to him?

A. Well, we agreed about it. She persuaded me to make the loan—she thought it would be good.

Q. Did it surprise you any when he asked for this money?

Objected to.

A. No, it didn't any more than it had done the first when the money was loaned.

Q. But when you understood that he needed this money to pay taxes on the estate, did it not surprise you that the estate had run so down that they could not pay the taxes?

A. No, it didn't surprise me at all.

Q. Didn't you talk to your wife about that fact?

Objected to.

A. I think not.

Q. Did you not talk to Alexander White about this circumstance?

A. That fact would not have made us talk about it, from the

fact we supposed that the estate would have to pay a good many thousand dollars in taxes.

Q. Was it not a fact well known to you and your wife that the family had been short of funds for a number of years back?

Objected to.

A. No, sir, it was not a fact we knew.

Q. Did you not at one time, some years earlier, give the family, or some member of the family, $75.00?

A. I think not; I don't remember of anything of the kind.

Q. Now, what did you give Alexander White for the joint note of himself and brother in September, 1878?

A. I gave him what I called cash, $5,500. I sold him 60 acres of land for $600; I sold him my quarry stock for $2,700, making it $8,800.

Q. Is that the quarry stock which you before spoke of, the interest which Alexander White bought in the company?

A. That is the same quarry stock I spoke of before.

Q. Is that the quarry stock which required those securities to be turned over and trust deeds to be executed which you then spoke of?

A. No; I held that quarry stock; it belonged to me.

Q. Did Alexander White have any connection with the quarry company before that time?

A. He had connection with the quarry company from 1874; the first of 1874; about the first of January.

Q. This quarry company was substantially insolvent when you transferred the stock in September, 1878?

A. I thought not, sir; I knew not; it was his own proposition to buy it.

Q. Hadn't the defense of the suit which you before spoke of, been virtually abandoned at that time?

A. At the time of my sale—is that the question?

Q. Yes.

A. No, it hadn't.

Q. Hadn't the trust deeds or securities been turned over to you, which you before spoke of, in connection with that company, long before September, 1878?

A. Not long, they had not.

Q. When were the conveyances made to you in trust, or as security, which you before spoke of?

A. I cannot give you the dates, but I think it was in 1877 or 1876; the last of 1876 or the first of 1877; I think the last of 1876.

Q. Where were these sixty acres situated which you turned in as part cash?

A. They were in Will county.

Q. *Was the title clear?*

A. *I think not; I didn't inquire.* I gave them a quitclaim for them, *at his own request.*

Q. How did he come to buy that sixty acres from you at that time?

A. He made the proposition to buy it.

Q. How did he come to buy the quarry stock?

A. He made the proposition to buy it.

Q. Was it not a condition of your response to his request for

a loan, that he should take this land and the quarry stock at the figure stated?

Objected to.

A. Certainly, there was a condition; I wouldn't have loaned him the money *if he hadn't taken the whole thing; I wanted to get clear of the whole thing;* I wanted to put it in shape so I could be away.

Q. What were the sixty acres, in the condition in which the title was, *worth at that time?*

A. *I don't know.*

Q. What was the quarry stock, in the condition in which the company was, *worth at the time?*

A. I sold to him for fifty cents on the dollar.

Q. What was the quarry stock, in the condition in which the company was, *worth at the time?*

A. *I could not tell you, sir,* more than the figure I sold it for; I was not acting as secretary or officer at the time.

Q. Did the sixty acres, in the condition in which they were, have any salable value?

Objected to.

A. I wrote to the recorder of Will county, asking about what they were worth, and he wrote back to me that they were worth, I think, from $15 to $20 an acre.

Q. I have inquired in the condition in which the title was?

A. I don't know.

Q. What could the quarry stock, at the time, have sold for in the market?

A. *I don't know that there was any market value to it; there was none on the market for sale.*

Q. Did it *surprise you any* that Alexander White and his brother gave you their joint note for $8,800, when you turned out but $5,500 in what you called cash?

A. I call it all cash; *it didn't surprise me any, no sir.*"

Aside from the above, Uncle McMicken held a note of Alex.'s given March 19, 1879, for $82.00, in consideration of moneys advanced heretofore in little driblets, (407). The parties had an accounting together on that day and the note was given in settlement.

BEING SHORT OF FUNDS NO SURPRISE TO NEAR RELATIVES.

One other fact is clearly apparent from above testimony:

Q. "Did it surprise you any when he (Alex.) asked for this money?

A. No, it did not any more than it had done the first, when the money was loaned.

Q. But when you understood that he needed this money to pay taxes on the estate, did it not surprise you that the *estate had run so down* that they could not pay the taxes?

A. No, it *did not surprise me at all.*

McMicken, 403.

Commentaries are superfluous. McMicken was "always on good terms with Alexander and his family," (159); consequently he was posted. The uncle evidently did not believe in the story of large ready means and surplus in bank.

From Lazarus Silverman.

He has known the family for 25 years and is a visitor at their house. (389). The witness at first proved to be very frank. He tells us that he discounted several notes of the estate (387) at three different times; that such transactions date back to about 1879, (387); that the notes were *generally signed by all the members of the family that were in Chicago,* (387).

> "My dealings with Alexander were such *I always had the mother* join. I think in any papers I loaned him any money, I wanted the *mother's signature.*" — —
>
> "Alexander had charge of the estate, I think, until within the last few years, when his younger brother had charge of it as far as I know, I think, joined with his mother. I really don't know whether the exclusive jurisdiction was in Alexander W. or not; he attended to the business."
>
> Q. When do you recollect of having had the mother's signature first?
>
> A. I guess in the first deal.
>
> Q. Was that a discount of a note?
>
> A. It is discounting that note, loaned for some money.
>
> Q. To what time did that first deal date back?
>
> A. Might be three years; I don't know exactly.
>
> Q. How long was it before Alexander *broke up?*
>
> A. I don't know when Alexander did "*break up.*"
>
> Q. Do you know now that he is broken up?
>
> A. I do not know what you call "broken up." I do not know whether he is "broken up" now or not.
>
> Silverman, 388.
>
> "I think it was a note, made by the estate of Alexander White. I really don't know any other way. They had given me some collateral, think an order for rent—hold on—let me see, *I had her writing, signed by Mrs. White and some other members of the family authorizing*—Alexander White—authorizing I *should loan some money to Alexander White for the estate.*
>
> Q. *Was that directed to you?*
>
> A. *Yes, sir.*
>
> Q. *Did that come to you with the first deal?*
>
> A. *I think it did; I think I required it.*"
>
> Silverman, 388.

Having on the first day of his examination elicited thus much, the witness on the adjourned hearing proved very refractory, and no amount of persuasion and legal pressure could prevail upon him to show his books or disclose further details, (391–392). However he insists, even upon cross-examination, that

> "I had some kind of a paper, signed by some of the members of the family, but do not recollect what the contents of the paper was. *I think it was signed by the mother and one or two of the sisters.*"
>
> Cross-examination, 393.

These impressions of the witness are evidently correct, because Alex. testifies:

Q. "Explain to us the origin and nature of the Silverman note and loan.

A. As I now remember, it was this: C. L. Rice & Co. desired money; I also desired money. The said firm made a note, I guaranteed the same, Silverman discounted it. *The note was guaranteed by members of my family*, at least they were held in some way legally bound to pay in case the firm or myself did not." (Alex., 332.)

To a similar effect is the testimony of James B., (295). That these particular papers (*which bear the signature of the mother*) cannot now be procured, is perhaps a very unfortunate circumstance. We have traced them into the hands of the White family (389. 295), but *there they became lost.* (James B., 295.)

We believe it needs no argument to convince the court that the memorandum produced as to the loans of April and July, 1879, does not cover *all* transactions between the parties (391). Alex. and James both concur that the *first* discount was a note of $2,500—or shall we be obliged to believe that the Whites are never able to tell the truth?

From L. C. Paine Freer—410-412.

This witness is not very definite in his recollections, but enough appears from his books and memoranda to convince us that the family notes given to him, date back to 1877, and that the note now exhibited under date of Aug. 20, 1878, was a renewal note.

The original, or Job Smith note and mortgage which were assigned to Graham in trust for the Whites, and by him subsequently transferred to James B., matured on Aug. 20, 1877 (page 410). Mr. Freer held Alex.'s individual note as collateral (411). The indebtedness was settled when due, by the execution of a family note (411), and the mortgage was assigned in blank (412).

The witness is strongly under the impression *that the mother's name was on the note* (412½), and considering all circumstances we are led to believe that such a note was really given in 1877 and renewed in 1878.

AMERICAN OLEOGRAPH CO.

Such was the real (although not ostensible) condition of things, when in the beginning of 1878, we find Alexander and one B. F. Guyton going to Milwaukee and negotiating for the stock of a lithograph business. The whole amount outstanding was $22,000; complainant owned $20,000. Alex. was the *prime mover* in this purchase.

"The latter part of the year 1877, Mr. Alexander W. informed me that he heard of the American Oleograph Co. in Milwaukee, and thought that it would be desirable to purchase the same if possible, and bring the same to the city of Chicago to occupy a portion of his building known as No. 83-87, Fifth Avenue, and for that purpose he desired me to go to Milwaukee to negotiate

for the same; and at his request I went to Milwaukee and saw Mr. Cotzhausen."
Guyton, 384.

The history of these negotiations is given at length by—
Cotzhausen, 341–348.
Guyton, 384–386.

It was *a regular confidence game.* No one can avoid this conclusion who reads the testimony at 341–348, which is mostly documentary. It discloses a systematic intend to defraud, The parties at first introduce themselves as possessed of vast wealth; Alexander is the *trustee* of an immense estate, left by his father and still undivided. He *"never borrows; he rather sacrifices,"* consequently he offers the family estate (suburban property, page 456) in payment (343). This being declined, the parties conclude "that an extension of the business, in connection with another establishment just bought in New York—for all cash—would exhaust their ready resources," and it proved comparatively easy to prevail upon this complainant to sell, mostly on credit.

The terms of sale were settled upon as follows:

Cash (sight draft) - - - - -	$5,000
Note due February 1, 1879, - - - - -	3,000
" " " " 1880, - - - -	6,000
" " " " 1881, - - - -	6,000

The notes were to be well endorsed and to bear 8 per cent. interest, payable quarter-annually.

White himself came to Milwaukee to inspect the property, and negotiated the terms. *He relates to the complainant* that on the death of his father in 1872 he was called to the administration of a very large estate; *that he still continues in its management as the representative and business agent of his mother and co-heirs;* that the estate has never been settled or divided, but is being managed by him for the common benefit of all; that his *main object* in making the proposed purchase is to *procure a permanent tenant for the family building on 5th Ave., and to place his younger brother James in business.* He reiterates and confirms what has been said of him in a previous letter by Guyton (343); he claims to be connected with the best and most respectable people in Chicago (see references 345), and thus prevails upon complainant to take the notes of Guyton, to order of Alexander White, and thereupon endorsed and guaranteed by White, S. B. Munson and the American Oleograph Co., accompanied by a sight draft of $5,000 on New York.

THE WHITES WERE THE REAL PURCHASERS.

Guyton was a nominal party—White and co-heirs the purchasers in fact (359–360). Alexander, the trustee of the estate, was introduced by Guyton as the capitalist who would furnish the money (Thurber, 357). Munson was an accommodation endorser merely; he was indemnified for his signature by White's bond (364).

But for reasons undisclosed upon the record, *White did not want to be known to outsiders as interested at all in the purchase or business.* His instructions were to keep his connection secret.

Guyton, 384.
Thurber, 358.
Cotzhausen, 344.

His extreme anxiety not to involve himself or family personally, centers even in *fictitious* names and signatures. His name becomes "W. Murphy," (Exhibit 1, page 444; Exhibit 10, page 445; Alex., 242, 337).

Q. "Did you at the time (summer of 1878) act and conduct yourself as the principal proprietor of the business?

A. *Only so far as the officers of the company were concerned.*

Q. Do you mean to be understood that as to others and the world at large, it was kept secret that you were interested, or what?

A. I so desired it.

Q. Why?

A. I did not care to have it generally known that I had anything to do with the concern." (Alex. 249.)

And if we need further proof, we find the same in Alex.'s letters to Guyton, when he writes: "Remember that my name is not being used."

Exhibit 15, page 447.

THE DRAFT GOES TO PROTEST.

As stated before, the first cash payment was made by sight draft on New York. It comes back for want of funds (357). The stock transfers had been fully made. A multitude of explanations and excuses are offered by Guyton and White, whereby the complainant is induced to indulge them from week to week and month to month, until Cotzhausen ascertains that the Lith. business is equally suffering from want of funds and gradually becomes badly demoralized. (Cotzhausen, 347-348).

In July, 1878, complainant commenced to suspect foul play. Guyton had left; Alex. managed the concern behind the curtains. Complainant then attached the stock interest of the purchasers. This unexpected move induced the Whites to come forward and make arrangements for paying the first installment of purchase money. White shouldered all blame upon the absentee and promised pay in installments, which was accordingly done between July and December following. (Cotzhausen, 348-349; Sylvester, 355-356.

Part of the money so paid came out of the business (348), the greater part *from the estate* (348). *The checks were signed "Alexander White, administrator."* (355).

As we have seen before, the money was borrowed from uncle McMicken, on Alex.'s and James' joint note.

The true nature of these transactions becomes fully apparent by a glance at the private correspondence between Alex. and the Secretary of the Oleog. Co.

Exhibits 10–32, pages 445–452.

We are are fully justified in saying:

The evidence shows Alex. to be a "big fraud." A more desperate character and systematic chain of false representations can hardly be imagined. Such conduct, as there disclosed, can only emanate from a mind greatly hardened by habitual sin and wickedness!

JAMES ENTERS THE BUSINESS.

Guyton has already informed us that—

> "Mr. White's primary object was (as stated to me) to provide a tenant for the 5th Ave. building and also for the purpose of giving his brother an opportunity of becoming familiar with the business or a business."
>
> Guyton, 384.

Alex. concedes this to be true and that he said so to Guyton 245.

He also admits that he spoke about his object to his mother; that James may have been present.

> "I said that I thought that an *excellent business opening* was offered me for my brother Jim, and a good tenant for the 5th Ave. building," 245.
>
> Read Alex.'s testimony, at marg. page 245.

As the mother was absent from Chicago and did not return until July 1878 (page 266–273,) we may naturally look upon Alex's conversation with his mother with some suspicion. But although it is now pretended that his mother (whom he never consulted before and who—like all others—had the utmost confidence in him, and consequently never had interfered in business matters) responded "that she would have nothing to do with the matter and told me to have nothing to do with the matter" 245, and utterly declined to avail herself of the "*excellent business opening and good permanent tenancy,*" still we find that brother Jim goes to Milwaukee "*by permission of his mother, in connection with the Lith. Co. in which Alex. had some slight interest.*"

Mrs. White, 266.

James himself explains how he came to go there. He evidently did not share the views of his mother. When spoken to by Alex. about this excellent opportunity to learn business. "*I looked upon it favorably and went up there.*"

James, 287–302.

The evidence somewhat conflicts as to when James went there first. His mother thinks in August, '78, (266); Alex. says it was July, '78, and that James remained there for about two months, until the concern was moved to Chicago, (248). Disinterested witnesses, however, say that it was shortly after the first purchase, as early as April or May, 1878.

> **"Mr. James B. White came to Milwaukee with a letter from Alex. White, to participate in the business. He went to work in the office with me, as requested by his brother, as an office assistant and to learn the details of the Lith. business. He was there until the removal of the business, almost steadily. Secretary Thurber, (358).**

The record shows several letters, Exhibits 20, 24, 25, 28, 31, in which reference is made to James while staying at Milwaukee. There can be no doubt that he was Alexander's "best bower." Alex. also spoke to Thurber personally on the subject of teaching his brother, (248–358), and as late as December, 1878, when Munson entered the company, he shows a very tender regard for the business education of his brother, "as James expected to keep the books of the American Oleograph Co."

Munson, 369.
Exhibits 24, 25, 28, page 450.

At all events, James came to Milwaukee to learn the business and ever since continued to be in and around the office until the very time of breaking up, in July, 1879 (page 369, 286). We quote from the Secretary's testimony the following:

JAMES' FAMILIARITY WITH ALL AFFAIRS.

(Thurber's pages 359–360.)

"Now will you please tell us whether pursuant to Alex. White's request you introduced and led James B. White into the whole situation of the business, its finances, books, debts and credits, and in particular whether he was made familiar with the relations of Alex. White to Mr. Cotzhausen, and the indebtedness arising on purchase of stock? Answer fully.

A. It was done by direction of Alexander White, that he was led into the details of the busines and made familiar with the same. He had access to the books and accounts at all times. He was familiar with the financial condition of the concern and also with the relations of Mr. Cotzhausen with Mr. Alexander White.

Q. Did he, while at Milwaukee, become aware of the stringent condition of finances, so frequently referred to in these letters?

A. Yes, sir.

Q. Did you have any occasion to communicate with him on these various subjects and prevail upon him to meet his brother when thereunto requested in some of these letters?

A. I remember of conversing with him a great many times regarding finances. I don't remember of ever prevailing upon him to meet his brother, but several meetings were arranged for them in Chicago.

Q. Was there anything in relation to the business, or Cotzhausen's relations to White's indebtedness that was kept secret from James, or did you converse freely?

A. Nothing kept secret from him."

And after removal of the business to Chicago his intimacy with the concern and all its affairs continued. He acted as the Secretary's assistant; he assisted in the books and correspondence, and (during the time Alex. W. was absent) he was considered and dealt with as the representative of the interests of the White estate.

Thurber, 360–361; 363.
Munson, 365–366; 369.

"He was consulted in the absence of Alex. W. on all matters of importance."

Thurber, 361.

Munson, 366.

"He always manifested an interest in the affairs of the concern." *Ibid.*

"There was no important step taken without consulting with him and following his suggestions."

Munson, 367.

"The first matters about which James was consulted was the arrangement of the shops and offices, and next the wherewithal to pay the bills."

Munson, 370.

He drew money from the company for his board and other expenses while at Milwaukee (358, 363, 248), and assisted the company out of his own means by advancing funds and making small purchases, (361, 367, 370).

When the concern was about to move to Chicago, towards September, 1878, James oversees the removal.

Q. "Did you assist in overseeing the removal of the business to Chicago, in connection with Mr. Thurber?

A. I did. The business was moved directly into 83–87 Fifth Ave. The whole upper floor and west half of the south half of the third floor of the building had been fitted up for this business, factory and office."

James, 288.

And ever since this time *Alex. and James dictate and control the policy of the business.*

"I considered Mr. White (Alex.) the principal man—the financial man. I looked upon him as the manager of the business. He was partly in Milwaukee, partly in Chicago, and we had correspondence with him even when in New York.

Q. Did he furnish the funds to carry on the business?

A. Not sufficient, no sir; he furnished some funds.

Q. Did you follow and obey his instructions?

A. Yes, sir."

Thurber, 358.

The numerous letters and telegrams received from White and offered in evidence, leave no doubt as to the correctness of the above proposition. Mr. Guyton, to whose name the stock at first was transferred upon the books, was but a figure-head. White held an assignment from him.

REMOVAL TO CHICAGO.

When the first object of this stock-purchase had been fairly accomplished and Jim had found a business opening, Alex. set about carrying out his other idea. The shop had to be moved to Chicago, where the family building awaited its new and permanent tenant.

The premises were fitted up at large expense to the estate. C. L. Rice & Co., tenants of the Whites, owed the estate a large amount

for rents (330), and furnished boiler, engine, elevator, etc., (335) at an expense of $2,500–3,000.

Alex. 249; James, 288.

"In addition, shafting on 5th floor of building, to be occupied by American Oleog. Comp., costing about $5-600, together with carpenter's work on said floor, costing perhaps $200."

Alex., 249.

As soon as the business was established in Chicago, White first got rid of Guyton (386) the whole stock was then booked in the name of Alexander White and ever since has so continued, although Munson, as early as December, 1878, obtained a due bill entitling him to one-fourth of the same (374).

The object of working Mr. Munson into the finances and books of the concern is evident. He was like clay in the hands of the moulder; and expert bookkeeper, always ready to accommodate himself to White's instructions, even if they involved the making of fictitious statements for the purpose of obtaining credit or alluring others.

Munson, 373, 375, 377.

The relations between them at first seem to have been very intimate; a great many side deals are brought to the surface. Their name is found side by side on commercial paper, loans, discounts, etc., and both insist that the other is at present indebted to him.

In the beginning Munson acted as bookkeeper and treasurer merely; soon after he procures to himself from Thurber one certificate of stock and succeeds to the presidency. But, as remarked above, in all matters of importance Alex., and, *when absent, his brother James*, were consulted.

There was no rent account kept or paid prior to July, 1879.

Q. "Did the owners of the building or their representatives ever collect their rents from the company?

A. Whatever rent was paid, was paid to J. B. White.

Q. Was there any rent ever paid or collected until Alex. had gone East and conveyed his interest in July, '79?

A. I think that no rent was paid up to that time. The cash books would answer that."

Munson, 368.

Q. "Did you not, either while you were holding the position of treasurer or president of that company, ascertain the amount of rental which the company had assumed to pay for the premises occupied by it?

A. I may have had a conversation with Alex. White in regard to the amount of rental, but I have no recollection of being asked for any rent. *I considered the owner of the building the owner of the business.*

Munson, 374.

But on the other hand, we find this surprising fact that from the very beginning the wages of the engineer, who was engaged to run the engine for the common use of all the various establishments, which occupied part of said building, were carried into the wages account of the company, and paid by it like others (374), and that

the Oleog. Co. supplied all coal, which was needed for operating the engine room. Its account for this purpose runs up to $2,526.12 from September to July 25th, 1879, nearly double its rental (374).

FIRST ATTACHMENT.

About Dec. 1st, 1878, some paper of the company, matured on which White appeared as guarantor. The company was in very straightened circumstances, but managed to conceal its embarrassments. White goes East, and invariably creditors are assured that as soon as he returns "debts, would be fixed up, he being the business man of the family," (368). On ground of such assurances and fictitious statements (350), it did not prove difficult to obtain indulgence and extensions.

Cotzhausen, 348–349.
Munson, 377–378.

On January 1st another note of the company matured, on which White's name also appeared as guarantor. It was protested. Renewed assurance that the fact was only owing to White's prolonged absence, carried the matter over to February, when the first one of the three notes given on purchase of stock at Milwaukee, became due. This also went to protest alike with some smaller obligations, interest notes etc.

Both of said notes had been discounted by the complainant—and when protested—the holder had to be protected.

Consequently the affairs of the company are more closely examined into; brother James' explanations as to the continued absence of Alex. did not any longer find unabated credit, and an attachment suit was instituted by this complainant, under which a custodian is placed in charge of the company's shop.

Cotzhausen, 351.

DEFENDANTS' BLISSFUL IGNORANCE.

Now mark: When Alex. left for the East, he requested James to stay around the office while he was gone, as he needed some one in there, in whom he had confidence. (Alex. 310, "to watch" James, 286). "He felt that he must have somebody, whom he was well acquainted with, in the office" (James 286).

"During all this time (January-April) I was repeatedly down at Chicago and talked with the officers of the company and James B. White in relation to the pending suit, and I am prepared to say that James B. White knew all about them."

Cotzhausen, 352.

"When the suit was brought, *James went with me and Mr. Thurber to consult* with Mr. Sisson in regard to the suit, the custodian, etc."

Munson, 366.

Q. "Did you ever have any conversation with James as to meeting the *liability on account of which Cotzhausen had levied*, or the reasons why the same was not met by White or family."

A. Yes, we had many conversations on the subject."

Munson, 368.

Q. "Do you recollect the time in the spring of 1879, when Tenneys & Flower, on behalf of Cotzhausen, caused the presses and other property of the American Oleograph Co. to be attached?

A. I remember of there being a *custodian* placed in there.

Q. Were there not about this time a number of inquiries made from you by Messrs. Thurber, Munson and the *Sheriff's*, as to the whereabouts of your brother Alexander, and if so, what did you say?

A. I remember on *several different occasions*—I do not know if it was this particular time or not—inquiries were made by the Sheriffs as to the whereabouts of my brother. I think that at such inquiry he was East, and I told them so. As to Mr. Munson and Thurber, I have not any recollection of their making inquiry.

Q. Did the deputy sheriffs about this time inquire for Alexander at your home?

A. I believe there was one on one occasion inquiring *at the house;* whether it was at this time I could not say."

James, 286.

Q. "Did James B. White take any active part after the removal into the 5th Ave. building?

A. Yes, sir.

Q. Who represented the White stock interest when Alex. was absent from Chicago during the following winter, spring and summer?

A. James B. White."

Thurber, 360.

Q. "Did James B. White acquire knowledge of such attachment and the causes prompting it; if so, state particularly what was said or done by him or any one of you relating thereto?

A. *He knew of the attachment.* Mr. Munson had charge of our finances at that time, and Mr. James B. White went with him on one or two occasions to assist in raising money to raise the attachment. Mr. Munson conferred with James on several occasions and went to the *White residence on LaSalle St.* with one of our directors, Mr. J. J. Lewis, for the purpose of raising money to lift the attachment suit on Mr. Cotzhausen's past due notes. Mr. Munson reported that *he was referred to the attorneys for the estate, Messrs. Barker & Buell.* I remember we got no money from either the estate or Barker & Buell."

Thurber, 360–361.

Q. "Did James communicate to his family the fact of an attachment being levied by Cotzhausen, as alluded to before?

A. I presume that he did. I asked him to and also called at the house myself. *I also called on Mr. Ira W. Buell, and he went with me to Tenneys & Flower, the attorneys in the case of Mr. C.*

Q. Was not the indebtedness, on account whereof this suit in the spring of 1879 was brought, or the greater part thereof, one that originally belonged to Alex. W. to pay, and grew out of stock purchase?

A. Yes, sir.

Q. Why did you call at the house of Mrs. W. and family and what took place?

A. I thought *they should be fully informed as to what was occurring.* I felt that they were interested in the business. I saw Mrs. W. *She referred me to their attorney, Mr. Barker.* I called

at the office and saw Mr. Buell. I think that was the time *B. went with me to Tenneys & Flower.*"

Munson, 367.
Mrs. White, 268.

But notwithstanding all this overwhelming proof, none of which is controverted, James, alike with his mother and sisters, *plead utter ignorance* as to all that took place. They merely knew that Alexander had "*some slight interest,*" (266). They do not know what it was. They had not *the slightest idea* that Alex. was indebted to Cotzhausen or any one else when they took conveyances of all his property, real and personal. The firm books, on which James was employed, the daily business associations, the numerous inquiries of officers, the seizure of the establishment, the interference of their own attorneys—still no one ever conveyed to them any knowledge of the situation! They apparently remain indifferent; they were "*not even surprised*"—and, with plenty of means in bank, as *they then labored to believe,* no one offers assistance when Alex.'s interests are being seriously jeopardized.

By way of further illustration we quote:

Q. "Did you not learn while at Milwaukee that Alex. had bought, *mostly on credit,* or assumed $20,000 worth fully paid stock of the American Oleograph Co., from Mr. Cotzhausen?

A. No, sir. *I simply knew that he had an interest, but what it was I did not know.*

Q. Did you not learn that he had bought this interest from Mr. C.?

A. *I did not know anything of this transaction whatever.*

Q. Did not Mr. Thurber frequently speak to you about it?

A. No, sir, he did not.

Q. Were you aware, while at Milwaukee, that your brother was in stringent financial circumstances and had great trouble in securing sufficient funds to keep the business of the Oleog. Comp. running?

A. No, sir, I was not aware of it.

Q. When, in the spring of 1879, at the request of your brother, you staid with the Oleog. Company and Cotzhausen attached, and a custodian was put in as you have testified, did you take any pains to ascertain the nature of the debt or cause of this trouble?

A. *No, sir; I did not consider it any of my business.*

Q. Did you *tell your mother* of it or speak of it at home?

A. *Yes, I think I did.*

Q. What did your mother or other members of the family say in response.

A. I do not remember particularly what they said.

Q. Was this about the same time when the sheriff inquired for Alex. at your house?

A. I have not the slightest recollection.

Q. Did any one of the family inform Alex. of the commencement of such suit?

A. Not that I know of.

Q. Did the news *which you so brought home* create any disturbance or call for any expression or action on part of the family?

A. Not at all.

Q. Did it not *surprise you* and family that Alex.'s interest was becoming threatened and your new tenant in the hands of the sheriff ?

A. I do not remember that it did ?

Q. Did any one of you when the sheriff called at the house inquiring for Alex., take the trouble to find out the cause of his legal visit ?

A. I do not remember that we did."

James, 300.

An equal degree of ignorance is pretended by the others.

Q. "Did you know that Alex. was indebted to Mr. Cotzhausen at that time (summer 1879) ?

A. I did not.

Q. What knowledge had you of any of Alex.'s indebtedness at that time to any one else than the family ?

A. None."

Mrs. White, 271.

But, if we may believe Alex. at page 339 it would seem, as if uncle McMicken, uncle John Reid and brother James kept the family pretty well posted as to Alexander's matters.— —

Still, *they all feign* "blissful ignorance," even Mr. Barker, in whose hands all strings and machinations center, is utterly innocent of all fraudulent intent, because he neither knew complainant nor anything of his claim.

Q. "At the time you perfected a settlement with Alex. on behalf of Mrs. W. and the other heirs, did you know the plaintiff or anything in regard to his claim against Alex. White ?

A. I did not."

Jos. N. Barker, 395.

What hypocrisy! Do these parties really expect that an enlightened court—in the face of such surrounding circumstances—will acquit them of a fraudulent intent in law and fact, because they swear: "*We never intended to hinder, delay and defraud this complainant,* because we did not even know him nor anything in regard to his claim, or Alex.'s indebtedness to others?"

CHATTEL MORTGAGE TO CLEVELAND PAPER CO.

During all these financial troubles, while a custodian was in possession, Alexander—the primary debtor—remained absent or concealed. Service could not be had upon him.

"I think he left Chicago in December, '78, and returned for a short time in February, '79. He then left again, I think, and returned in April. It is my impression that he was here in February, 1879, over a couple of weeks."

Munson, 366.

During his absence the complainant's attachment suit lingered along in court. The company proved unable to raise the required amount from its own means. Not desiring to hamper the business any more than absolutely necessary (correspondence page 352), the custodian is withdrawn about May 1st, 1879 (Munson, 377,

Cotzhausen, 352). Towards that time White returned from the East, but instead of adjusting the indebtedness, which was hanging over the company and which for the greater part was for the Whites individually to pay, we find on July 17, 1879, the officers of the American Oleograph Company executing a chattel mortgage for $10,000 to the Cleveland Paper Co., covering all tangible property of the Lith. business, to secure two notes of equal amount made by Alex., Munson, and the Company, jointly.

Munson, 365–366, 377.
Alex., 311.
Cotzhausen, 353.

This mortgage was not executed until after "*Mr. White consulted with his family and said they would be willing a mortgage should be given, if* $500 *was paid to them.*"

Munson, 365.

Ira W. Buell, who already appeared on the stage at the time of first attachment (see page 367), again acts as advisory counsel for the Whites, while W. H. Sisson is attorney for the company.

Munson, 366.
Thurber, 362.

A check for the above $500 was actually made out and given to Alex. or James, but for some reason afterwards withdrawn and a less amount paid (365). This failure to pay mother White the $500 as promised, seems to have become a stumbling block, because Alex. writes to Munson (Exhibit 36, page 454).

> "If you had only paid that promised check, I might have helped you some, I think, but not so very much ; it would have given that confidence and trust, which is essential and fundamental in all financial doings."

So that there can be no doubt that the defendants and all of them were actually cognizant of what was going on and expected to participate in the spoils, which were sought to be secured.

Although not essential to the consideration of this suit, it may be proper here to state that immediately upon the recording of the above mortgage, Cotzhausen again attached. For the second time a custodian was placed in charge, and by legal persuasion that suit was settled by the execution of a second chattel mortgage to secure the amount then due (Munson, 378). The correspondence between White and Munson (Exhibit 34–35, pages 452–453), shows Alex.'s character and rascality as plainly as language can express it. Attention thereto is particularly called. It was fortunate for this complainant that Munson proved a man who was not as yet destitute of all honor, although his associations and prolonged schooling with White had for a time exerted a pernicious influence.

ADMINISTRATOR'S REPORT IN PROBATE.

Within a day or two after giving the chattel mortgage to the Cleveland Paper Co., on July 21, 1879, we find the administrator in probate court rendering his final account.

Pages 441–444.

It is almost useless to say that everything on this settlement in probate was done by consent. Barker & Buell apparently represented the estate (443). The administrator *needed no one to act for him* on the record.

Alex. charges himself with all personal property, that he received according to his first inventory, and *some more*; he is *particular* to supply on the debit side an omitted item, a "cow, calf and pig." He credits himself with the residence furniture, etc., selected by the widow, and the expense of constructing two buildings. The balance of $89,646.05 is reported as still in his hands. *He charges nothing for expenses, commissions, etc.*, in handling a big estate, with all its attending burdens, litigation, repairs, losses, etc., but is kindly disposed towards his relatives and consequently debits himself with $40,123.80, for *four and a half years interest at ten per cent.* up to the date of settlement, although an accounting had been expressly deferred *by common consent* and for all financial purposes there had been *but one fund*, in which all participated, share and share alike, as opportunity and individual inclination prompted from time to time. (Ante). (More will be said of this accounting hereafter).

CONVEYANCES TO RELATIVES.

A balance of $129,769.85 having been thus arrived at, the remainder of the programme finds ready solution. Alex. was entitled of the above amount to 1-6, less the interest of the widow. He was a defaulter, consequently he deeds all his real estate in two parcels to his brother and sisters, and also gives them a bill of sale of his 1-6 interest in the oil paintings for a nominal consideration of $1200. (See answers).

James, 296, 291, 275.

Being so stripped of all property of value, his brother and sisters join in a receipt expressing settlement in full (275–292).

"He had nothing further to give, and we were not inclined to press him."

James, 297.

Simultaneously with this transaction he turns over all the remainder of his property, notes, obligations, stock interests, etc., including his stock in American Oleog. Co. to his mother, as collateral to the judgment note, *one day after date.*

Why the younger ones took all of value, leaving to the aged mother these almost worthless traps which Mrs. White "*never expects to collect*," no one can explain. Bro. Barker knows—we do not, it was all left to the attorneys.

James, 297.

This note a short time later culminated in a judgment.
But we will let mother White speak for herself:

"I do not remember what Barker told me as to the *necessity or policy* of entering the same.

Q. Can you give us any idea as to what he said ?

A. I do not remember any idea that I could give."
Mrs. White, 269.

Q. "To what time does the *special agreement* date or reach back, whereby Alex. agreed to turn his interests over to the family in liquidation of his indebtedness ?

A. I cannot mention the date. I do not remember dates well. I cannot tell whether the agreement was in writing or verbal.

Q. *What were you to do on his turning over all his interests in the estate, or share allotted to him ?*

A. *I was to get out the $42,000 judgment.* He gave over some notes, that were perfectly worthless to me, and *the rest he was to turn over to the others.*"
Mrs. W., 273.

As we further progress in the case, we shall be able better to appreciate the drift of above *bargain !*

ALEX EXECUTION PROOF.

From this time on the poor boy is found depending upon the bounty of his relatives for support. He is utterly stripped of all he owned (241) and lives on the bounty of his family (241). He immediately goes East and *completes his law studies.* His vacation is spent at watering-places. *He does not work—he earns nothing.* A gold watch (out of repair, 241), is all that he calls his own. Since he returned from the East he and brother James have an office with Mr. Barker; they all use the same vault; they use the same family carriage; they eat at the same table; mother White and Alex. go to church together (272); it is all one family and one common fund—with the exception that the defaulter draws upon their *love and affection.* Whereas up to July, 1879, Alex. acted *as agent and trustee,* using his individual name *and James assisted him,* so now James is running things in his own name and "*I am attending to the interests of my mother, sisters and brother, together with my brother, for a living* (*Alex.* 239, 256)*; my brother has the immediate charge; they pay me no salary*" (239).

More will be said on this subject hereafter.

His unsecured indebtedness in July, 1879, to outside creditors, exceeded $100,000.
Alex., 243, 256, 255.

PARTITION SUIT.

It will be borne in mind that the *butcher's check* to Clybourn Bro., for $16.17, which was given about May 10, 1879, proved the *very first intimation* to the family that things were not as they ought to be. Until that time, Mrs. White and all others pretended to be

lulled into the belief that they had plenty of money in bank. *It was then that they first sent for Barker*, because Alex. "*became very nervous and would not talk much;*" that Bro. Barker created the utmost astonishment by *his discoveries;* that a family council was held and that it was determined to break up the common fund and have a partition and division. As to these facts the defendants are positive and explicit.

"It was in July, 1879," says Mrs. White, 267, 262.

Q. "Do you still insist that the protest of check given to the family butcher was the first intimation that you had, or other members of the family, of Alex's. defalcation?

A. Yes, that is the fact." *Ibid.*

"We gave the whole charge to our attorney, Mr. Barker. *He divided the property; can't explain how.* I suppose *each one* had their share—was the way I understood it—to divide it *evenly.* I had my part in a building, which was given to me—the 5th Ave. building. The balance was divided *among the children equally.*

Q. How did it come that such division was made?

A. We thought it was the better way, when Alex. had made a failure in taking care of our estate, to have tne division. We all thought so ourselves; my oldest daughter and I talked it over; Mr. Barker so advised us.

Q. Why did you think that a division should first be had after you had found Alex. to be a defaulter?

A. Can give you no other answer than because we thought so. My oldest daughter talked it over, and youngest son, and thought so.

Q. Where did you first hear or learn that Alex. had embezzled the funds of the estate?

A. In July, 1879, I think. *It was not before a check had been refused at the bank; that was the first intimation we had.*"

Mrs. White, 262.

"We gave them (Barker & Buell) no instructions at all; they said that, as we were *all now of age*, and *in view of Alex.'s embarrassments*, we had better have a partition of the estate; that is all."

Elsie, 274.

Q. "When were Barker & Buell first engaged for the estate, and for what purpose, after the taking out of the letters for the estate?

A. In 1879.

Q. For what purpose, and why?

A. *For protecting the heirs.*'

Mrs. White, 270.

Q. "What was the *object of the partition* suit.

A. It was begun because the family all desired it. At the time it was commenced there was a general feeling that we would like to have it divided. That was the beginning of it. Do not remember the object why it was commenced, except we wanted it so.

Q. Is that the best explanation you can give as to the object?

A. Yes.

James, 283, 299.

"We felt as if we ought to know the affairs of the estate, as we were interested in it; the members of the family were nearly all of age, and *we thought it was time the estate should be divided.*"

James, 300.

Up to that time there had been no accounting; the administrator had not refused to settle; *nothing had occurred amongst the family to mar or disturb its harmonious relations and mutual confidence. Ibid.*

Q. "Did you every employ an attorney to attend to your business?

A. Yes; Mr. Jos. N. Barker. Don't remember when.

Q. What did you employ him for?

A. I don't know

Q. Who told you to employ him?

A. *My brother Alex.*"

Annie C., 259.

But when we look at the records, we find that as early as May 22, 1878, Mr. Guyton (then Alex.'s right bower) writes to Thurber: "His estate will be divided in a few months and then he can get all his money," etc.

Guyton, 385.

And as early as October 8th, 1878, this same Guyton goes to the White residence and takes the acknowledgment as Notary Public of a petition in partition of Mrs. White and children in a suit against Alexander.

"I took the acknowledgment at the residence of the White family, *at the request of Alexander White. I think he was present at the time.*"

Guyton, 386.

The petition was filed Oct. 11, 1878 (page 419), Barker, Buell & Barker, appear of record for the complainants. N. T. Fitch, Mr. Buell's present law partner, enters his appearance for the defendants. He acted the part of an *accommodating neighbor*, supposing it to be a mere *matter of form.*

Fitch, 383.

The suit proved a very tame affair. It was conducted very amicably, *Barker, Buell, & Barker act for both sides*, on this occasion as well as on the accounting in Probate.

Q. "What was the object of such partition?

A. My folks wanted it.

Q. Why—for what reason?

A. They desired the estate divided.

Q. Who was the attorney for the complainants?

A. The firm of Barker, Buell & Barker.

Q. Who was defendant's attorneys?

A. *The same firm acted as my attorneys.*"

Alex., 321.

James, 299.

That Jos. N. Barker was in fact acting as attorney and legal advisor *for both parties*, is further apparent from Alex.'s testimony, page 254.

Q. "Who assisted you in making up your account to the County Court?

A. Mr. Barker, *my attorney*—(Jos. N. Barker.")

And, as we shall more particularly see hereafter, for the services so rendered, Alex. owed Barker $1,000 (page 255), which amount was paid in July, 1879, by a deed of an undivided half of block four in the town of Jefferson.

Alex., 308–309.

Consequently the partition suit was a mere matter of form.

"It was an *amicable* partition."

Alex., 321.

Why *legal proceedings* were resorted to in order to effect such a division, instead of exchanging quitclaims amongst the pool, is not difficult to discover. *Bro. Barker needed a basis for further operations and found it in the commissioners report.*

The interest of each child in the real estate was *legally equalized and appraised* at about $70,000 (James, 292); Alex. owed to his brother and sisters upon accounting in Probate about $71,000—a like amount. It could not therefore, *in view of this legal record*, well be said by other creditors that the consideration, for which Alex. deeded to his sisters and brother, was *grossly inadequate*, although his share is admitted a few years later to be worth twice as much (292). There is a *legal record*, upholding the *appearance of honest intent!*—

As might be expected, default was made in partition on part of the defense. On May 20, 1879, Horatio L. Waite, another of Barker's legal associates (410), Master in Chancery, filed his report as referee; Alexander White was *the only witness* called upon by complainants to prove their case. The report was confirmed the same day, and a decree entered, appointing commissioners. The final decree, is given at length (pages 438–439). Partition by commissioners was made accordingly, setting off to the widow and the several children certain portions of the estate. The report was filed and confirmed July 16, 1879. The real estate conveyed by Alex. to his sisters and brother is the same, so set off to him on partition.

Further facts will be alluded to as the argument progresses.

POINTS AND ARGUMENT.

We have already called attention to a few facts, which we beg to recapitulate:

1. The building contracts and crisis of 1873 had exhausted the cash resources of the estate, and—in the nature of things—the income up to 1879 could not possibly accumulate; yea, hardly supply the ordinary demands of the family, management of estate and incidental burdens.

2. Although the defendants pretend to believe up to spring of 1879 and the discovery of Alex.'s defalcation, in a vast cash sur-

plus in bank, they are shown to have borrowed thousands and thousands of dollars from relatives, friends and brokers, ever since 1876.

3. The story of the butcher's check as the *first intimation* of Alex.'s being short in his accounts and funds, turns out to be a mere myth.

4. The partition suit was a sheer matter of form, and the accounting in Probate highly colorable.

But we do not intend to stop here. A number of other significant features present themselves upon the record, more or less inconsistent with the position assumed on the defense.

LEGAL PRINCIPLES.

Generally speaking, we believe it to be well settled that on such conveyances by insolvent debtors to members of the same family and household, the burden of showing them to be *bona fide* and supported by a good consideration rests with the party claiming the benefit of the same.

Such seems to be the doctrine of—

Callan vs. Statham, 23 How., 477.
Venable vs. Bank, 2 Peters, 107.
Bartlett vs. Mercer, 8 Ben., 439.
Seitz vs. Mitchell, 94 U. S., 580.

Especial attention is called to the above cases because in many features analogous to the one at bar.

In Callan vs. Statham : "Inadequate consideration of price ; possession and receipt of rents by vendor ; prior indebtedness of vendor and pending suits against him at date of conveyance, well known to vendee (who was his brother) and the absence of all attention or evidence of interest of vendee in the matter, and of any proof of payment—held sufficient to rebut answer."

In Venable vs. Bank of U. S., a *guardian's* account was sought to be made the basis of consideration, certain discrepancies therein, however, proved fatal.

In Bartlett vs. Mercer a brother and sister owned certain property jointly ; the proceeds were allowed to be reinvested *in name of brother*. Making up an account and conveying property, when insolvent, to sister in consideration of the indebtedness so found—held to be fraudulent.

And in Wolcott vs. Almy, 6 McLean, 23, it was laid down that "*conveyances, executed under whatever pretenses,* by an individual insolvent or unable to pay his debts, will be held *prima facie void* in the hands of the grantee against creditors, especially *when the grantee has knowledge of the facts.*"

With these legal principles in mind, we shall now recur to the evidence.

I—FINAL SETTLEMENT IN PROBATE.

The settlement in probate furnishes the basis for all future deals. Total amount due and owing, $129,000, of which every one of the heirs was entitled to one-sixth, less the widow's dower. It shows how the consideration of the deeds and judgment note was made up. (See defendants' answers.)

Now, it will not need extended discussion to show that this so-called *final account is a mere aggregation of figures, not warranted by the actual condition of things, and evidently an attempt to exaggerate the debits, while curtailing the credits as much as possible.*

There is not a single one of the heirs, who pretends to say how the figures were arrived at; they all left it to Jos. N. Barker, their attorney. (291).

"I cannot remember the way it was figured."

James, 291.
Elsie, 274, 275.
Mary, 278.
Annie, 259.

"I know nothing of the way it was figured. I left it with Mr. Barker and Mr. Buell."

Mrs. White, 264, 262, 266.

The figuring was done by "*Barker, Dreisslein and myself.*"

Alex., 304.

That on this accounting Alex. was also assisted by Jos. N. Barker as *his* attorney, may here be incidentally called to mind. (Alex., page 254).

The *original* compilation *happens to be lost*—no amount of legal persuasion can find it. (258–303, 304 305–306). A *spurious* one was of late prepared and is now sought to be substituted. (303–304, 306–307.

None of the items in said administrator's report were averaged or lumped, says

Alex., 305.

Q. "Define and explain fully on what basis and in what manner you figured, so as to arrive at the aggregate of disbursements properly to your credit as administrator of the estate?

A. I made it up from the bank books, and the checks thereon, together with the receipts for the checks; also other receipts which were paid for in cash. *I had nothing else to go by.*

Q. Did you credit yourself, on such accounting with the estate, with any more than the receipts, now produced and on this table, called for?

A. I think most of them are there. I cannot say if I did, not having examined the papers of late. I think, however, there may be other receipts or vouchers.

Q. Did you debit yourself, on such accounting, with all moneys which the three bank books referred to this morning show to have been deposited?

A. No, sir."

Alex., 258.

This report of receipts and disbursements as administrator—Alex. tells us—is "*correct to a cent.*"

Alex., 328.

But although he says so, we are not disposed to allow his figures to pass without slightly scrutinizing them; we cannot well adopt his version of the transaction, still less consent to the making up of an indebtedness as attempted to be done here.

a. The amount found due on such official accounting in probate is about $89,000. The administrator then *kindly charges himself with* $40,000 *more for interest* at 10 per cent., "*by virtue of the statute.*" But while we deeply appreciate his generosity towards his relatives, and have seen many instances of Alex.'s self-denial (yea, even had occasion to notice that his liberality extended to the *lawyer of the opposite side*, to whom he thankfully voted $1,000 for kind assistance rendered him on this "*settlement with his folks*"—Alex., 308–309), still we respectfully submit that this small item of $40,000 is not as it ought to be, and that the "*virtue of the statute*" should in this instance be suspended, *in view of the dual relation*, in which the gentleman stood, by common consent, as administrator and agent, mixing and mingling real and personal property, purchasing and selling entirely at discretion, and maintaining but one fund for all purposes, an accounting and settlement being not desired on part of those directly interested, but, on the contrary, *intentionally deferred.* (Ante.) 253, 261, 300, 268, 277, 246. Examine cases cited in Gary's Prob. Pr. 219.

b. Is it compatible with fair dealing towards us that—having charged himself with $40,000 interest as above—he push his generosity still further by waiving, in favor of his nearest relatives, all compensation for the best six years of his life in managing a large and complicated estate, and piloting it through a prolonged crisis, until, in 1882, its income from rents alone amounts to $30,000. (page 285.)

> Q. "How much has there ever been allowed to you, while in charge of the estate, for personal use and expenses, or subsequently for your services, commissions or otherwise, as administrator of the estate or agent and representative of the heirs and family?
>
> A. Nothing allowed to me in particular—no definite amount. It was taken into account on my final settlement with my folks in July, 1879."
>
> Alex., 334.
>
> Q. "Have you ever received, been charged or credited with anything for above purposes (commissions, administrator's services, or for incidental expenses), outside of what you stated?
>
> A. Not that I remember of."
>
> Alex., 314.

c. Is it not slightly surprising that on this accounting he should charge himself with every little item of personal property, that came to his hands (even a cow, calf and pig) and forget the thousands, which he paid out for oil paintings, pictures, &c? (Ante.)

d. Can the administrator fairly explain, why he should increase the cash on hand in his final account some $4,000 under date of April 1, 1872, over and above what he had on June 17, 1872, according to his original inventory? Will the court accept the supplementary book entries of spring 1879 as explanatory? It is likely that an item of $5,000 cash on hand at time of death, should have been forgotten and omitted from inventory in 1872?

(Alex., 333.)

e. Does is not indicate the height of generosity that he assumes and burdens himself not only with all bad loans to mother's brother (John Reid, $2,223 and $2,037.94), but to other friends of the family (page 340), and the Lake Forest Hotel Comp. (318)? That he should omit to ask credit, for $10,903.14, paid by way of assessments on stock, *by consent of mother, sisters and brother* (page 314)? That he should shoulder all doubtful demands, even when they grow out of uncollected rent accounts or the dishonesty of collectors? (Ante. 313.)

f. Had his co-heirs a right to expect that he, while not asking anything for his time and services, should meet out of his own means the expenses which were incidental to the estate, its protection and management? Yea, even improve the estate of his co-heirs by furnishing boiler, engine, shafting, etc., without asking any credit (318, 330), or draw upon the Am. Oleog. Co., in which Alex. had a "*slight personal interest*," for engineer and coal bills? (Ante.)

g. Has Alex. really forgotten that Barker & Tuley did not pay their notes in cash, as *reported* in his official account, but that two-thirds ($1,503.64) went to old account for services (page 320), not to speak of their professional bills subsequent to death of Alexander White, Sr? (Ante.)

Most certainly, whatever otherwise may be laid to his charge, Alex. proved on this accounting in Probate a *most unselfish and affectionate son and brother!* — True, it may not be altogether possible for him and counsel to show that his official account, as sworn to in probate, is in accordance with all the facts of the case, but *such trifling defects are readily cured.* Alex. retires in summer of 1882 for a few weeks to the country, and when he returns he does not any longer "*labor to explain*" former discrepancies, but he makes up a *new* account, wherein he confesses his defalcation to be *a little more*, in order to guard against unforeseen future contingencies, (page 457).

Read James' testimony as to where he found this new fraud, (303).

However, to this after-consideration we respectfully object. The defendants have plead the accounting in Probate as consideration for the conveyances; we have taken issue upon the same and have shown it to be a fraud upon the court and upon ourselves! What, then, is the result? Are defendants allowed to try again or try *something else?*

II.—INTENT OF GRANTOR.

We may be prejudiced against Alex., but if so, we misconstrue the facts and uncontroverted evidence in the case. We believe him to be *a great fraud*, although moving in good society! That all his former chums (Guyton and Munson) now complain of being "taken in," may be immaterial in this case, still it is a fact corroborative of our impressions. But let the record speak for itself: Alex. has studied law just sufficiently to make him shrewd and calculating—in transacting business as well as testifying in court. He pleads affirmatively the embezzlement of the moneys of the estate and the obtaining the signatures of his "*unsuspecting*" brother and sisters to a number of notes by multiplied falsehoods. That he is unscrupulous in the choice of his means and that he does not even hesitate to resort to colored and fictitious statements (375) in order to obtain means and credit, appears from the testimony of Munson, Thurber, Cotzhausen, and others. (Ante.) That he loves dark ways, that his name at times becomes W. Murphy, and that he industriously labors to cover his track, has been shown before. Although expressly authorized to act as trustee for his co-heirs and to use his individual name in that behalf, he takes almost invariably in all important transactions the title in some one else. *He loves secret trusts.* Names and titles change of record as rapidly as a chameleon changes color. Thus we find

Sylvester Lind, 333, 414, 312;
Uncle McMicken, 398, 399, 400, 404, 337;
Mr. Phillips, 399;
B. F. Guyton, S. B. Munson, Graham, and others,

acting as trustees, taking title in their own name.

That the White family *generally* incline to *secret trusts*, "*merely for convenience sake*" (314, 421), is perhaps explanatory of Alex.'s disposition. For example: We find to-day, James in matters of the estate signing his individual name, as Alex. used to do up to 1879, (ante); and the 5th Ave. building, at one time set off to the mother and by her then mortgaged (page 265) for $35,000 to pay re-assessed taxes, is of late, "*simply for convenience sake*," deeded to James, (page 283).

There can be no doubt that Alex. was systematically bent upon fraud from the beginning. Just think of his real situation in January, 1878, as now apparent upon the record; of his letters to Guyton and this complainant; of his references as given Feb. 4, 1878 (page 445, Exhibit 3); of his sinister attempts to obtain the notes of the Oleog. Co. for $9,000, after Guyton had been confidently made president, and before even the first installment or New York draft had been met (Exhibit 11, page 445); of Guyton's telegram to Thurber, July 7, 1878, shortly before removal to Chicago; "If you carry out White's plan, all will be well," (Guyton, 385)—and then if any doubt remains, read his letters to Munson, which he writes from New York after July, 1879, directing operations at home, *suggesting further and continuous steals*, and winding up by exclaiming:

"*Thus Cotzhausen would be ousted out of all, as he deserves.*"
Page 452. Exhibit 34.

How earnestly he addresses his former conspirator for consultation and advice to Barker & Buell (Ex. 34, 35, 36, 38, 39)! How he whines, when he is informed of the execution of a second mortgage to G. Sylvester, trustee (Ex. 39)! How anxious he appears in enlarging the amount actually due and owing under the first mortgage to Cleveland Paper Co., (Ex. 39) so as to postpone complainant, and others interested with him, in their subordinate claims and liens!

It is no wonder that *he begs to suppress* this correspondence, because it stamps this whole transaction *by his own confession*, to be an *intentional* and *systematic* fraud!

"I wish you would keep my letters by themselves, as they contain matters I would not care to be seen by any one but you."
Exhibit 37.

And his general unscrupulousness is further demonstrated, when he suggests to Munson to remove all unmortgaged property and send all chromos to him at New York.

"I would make it my business to dispose of them in some way; I believe it's a good idea; you need not say anything of it to others (meaning their associates in the Oleog. Co.); *let it be a matter between us.*"
Exhibit 34.

III.—KNOWLEDGE OF GRANTEES.

It is not at all surprising that the White family, in pleading to the bill, should deny "knowledge, consent and concurrence" as to Alex's doings and fraudulent machinations.

It will be borne in mind that every one, including Mrs. White (271) and Jos. N, Barker (395), swear that, when these conveyances were made, they knew neither the complainant nor of Alex.'s indebtedness to him. (Ante).

Now we beg to call to your attention again the part, which James played on the purchase and loan from Uncle McMicken; the conversation between Alex. and his mother about the permanent tenant and excellent business opening; the familiarity of James with the books and business; Alex.'s intimacy with Jim (Ex. 20); his directing the removal to Chicago; his staying in the office, while his brother was absent; his *keeping watch*, because Alex. needed some one "*in whom he had confidence;*" the first attachment and custodian; the visit of Munson and Lewis at White's house; the request upon Mrs. White to assist; her advice to see their attorneys, Barker & Buell; the sheriff in search of Alex. at the family home; Barker & Buell interviewing Tenneys & Flower in regard to the attachment; the consultation with Buell, when executing the first mortgage to Cleveland Paper Company (362, 371); the letters of Alex. to Munson, constantly referring him to Barker & Buell as his only hope in a serious dilemma (35, 36, 38, 39); and then consider these uncontroverted facts in connection with the evidence and situation generally! *Can*

any doubt remain that the parties knew Alex. to be indebted to this complainant, when they took from him the conveyances in question?

Will it be pretended that the demand of a $500 check by the White family, which Munson testifies and Alex. writes about, is a myth? (365, 379, 454). Did they participate and mean to partake of the loan from Cleveland Paper Company?—What caused James to call upon the Am. Oleog. Co. to pay his board and pocket money, while at Milwaukee? Why did James advance money from time to time, when, during Alex.' absence, approached by Munson, as the representative of the family, the owner of the building and lithographing business?

What caused James to interfere in the controversy in Milwaukee between Thurber and the mover, while quarreling over some charges for drayage, introducing "*himself and sister*" as the *proprietors of the business, and guaranteeing payment?*

Thurber, 359.
Peak, 380.
Pereles, 381.

Did mother White and the other defendants remain *purposely ignorant* of Alex.'s embarrassments, *when the whole circle of other relatives and friends talked of it?*

We have already seen that a number of notes bore the joint signature of Alex., his brother and sisters; we have also good reason for believing that Silverman had Mrs. White's note early in 1878 and 1879. They also knew of Alex.'s investments when he took title in Lind's, McMicken's, Graham's and others' names.

"They were informed of most of these investments, by others than myself, *with the exception* of the purchase of the Am. Oleog. Co.'s stock."

Alex., 338.

"As to the quarry, they learned of it through Mr. McMicken or Mr. John Reid, I think, both of whom are my uncles. I do not think they ever knew of the various loans I made, with the exception, perhaps, of the one to my uncle, and *the Am. Oleog. Co., through my brother.*"

Alex., 339.

But the evidence shows conclusively the knowledge of his embarrassments to have widely spread long before July, 1879. McMicken has already told us that he was *not even surprised* when, in summer of 1878, Alex. borrowed money of him at suicidal rates. Within six months thereafter, March 19, 1879, (408) he took occasion to speak to the family about it; Elsie came out to Aurora and agreed to see the note paid. (McMicken, 405-406.)

As to the time when the news of Alex.'s embarrassments reached Aurora we are not left in doubt. A few days after the first semi-annual interest note became due, McMicken went to Chicago to see James. (408.)

Q. "When did you first hear of Alexander's being so far short?

A. About a few days previous to my coming into Chicago to see James.

Q. State the circumstances, what you heard, and from whom.

A. I heard from my niece, who had been down to Hickory

Creek to her home; she heard that he had been involved, squandered, or somehow or other, the avails of the estate, so he was $40,000 in debt."

McMicken, 408.

But aside from all direct notice to the parties in interest, we insist that *the knowledge of their attorneys was ample and sufficient.*

The defendants, then as at present, were firmly united in interest, and Jos. N. Barker and friend Buell acted as their attorneys. Buell does the work, Barker the scheming. The former conducts matters in court—the latter plays the part of "*Deus ex machina*," sitting behind the curtains, preparing, shaping and pulling the strings.

The question being asked why a bill in partition was filed as early as October, 1878, while the butcher's check was not given and Alex.'s defalcation was "*not even known to himself until long thereafter*" —no one can explain but Barker.

Q. "Now is it not a fact that as early as the month of October, 1878, your family knew that you were short in your accounts?

A. I do not think so, *as I did not know myself.*"

Alex., 321.

Mrs. White, 262, 267.

What the object of a partition was at that early day, and what in the end was sought to be accomplished thereby, no one knows but Barker.

James, 300; Elsie, 274.

How the figures in Probate were made up or arrived at, no one can tell, as our attorneys, Barker & Buell. attended thereto.

Mrs. White, 264, 266; Elsie, 274; Mary, 279.

What became of the original figures or compilations prepared at the time from the checks and memoranda on hand, no one can ascertain; the original statement was last seen in the hands of Mr. Barker; now it is lost. (Ante.)

Why the brother and sisters on their settlement in July, 1879, should take all that there was of value, and leave the worthless trash to the aged mother, no one knows, but Barker wanted it thus.

Alex., 326; James, 297, 301.

Why James and his sisters should take their portion in common, and Margaret hers separately, no one can tell; Barker, the attorney, decided to settle it in this way.

Alex., 326.

Why the mother should enter a judgment within a few days after stripping Alex. of all that he had, especially "*when she never expects to collect it*," no one knows but Barker; he advised that it was *necessary* to give the defalcation *publicity* (265–266).

Yea, even Alexander is so implicitly under Barker's control that he transacts the business of the estate in his own individual name, because he is told so by Mr. Barker, the attorney for the estate, and he does not even venture to ask—why? (Ante).

Thus, throughout the case, everything centers in Barker—every one points to him for information—even Mr. Buell (279). Who is he—what part does he play in this case? Whom did he represent? The mother and children say: "*us—we all left it to Barker & Buell, our attorneys;*" and Alex. evidently did likewise. He was also *assisted by Mr. Barker,* "*my*" attorney, and owed him $1,000 for services so rendered. (Ante). Also page 308.

So that the conclusion is irresistible: *The parties had but one attorney, and the attorney had but one client!*

However, we do not mean to be understood, as if there were anything surprising to us in this *apparently* conflicting position, and *pay from both sides,* if we consider the circumstances of this professional retainer, viz:

> "We then proposed the division, *after we found out how things stood;* the division was to be made equally, *through the courts, amongst all the children, evenly.*"
>
> Mrs. White, 262.
>
> "I was employed by Mrs. White and the heirs to settle with Alex. White, and the basis was one and the same transaction."
>
> Barker, 394.

Barker was engaged "*to protect the heirs,*" and Alex. kindly assisted to accomplish the object.

And although Barker now comes and asserts that he did not even know of this complainant, and Alex.'s indebtedness to him, we cannot believe him, but are convinced that *he knew Alex. meant to defraud his outside creditors.* We cannot possibly harmonize the uncontroverted evidence with any different conclusion! *And his knowledge is, in law if not in fact, the knowledge of his client!*

> Every time when legal assistance was needed, the firm of Barker & Buell appeared on the stage; they interfered on the first attachment; they interfered on mortgaging the property to the Cleveland Paper Co.; they interfere when Munson, Lewis and Thurber cry for help (366-367); and nothing (so writes Alex.) ought to be done without consulting them.

IV.—THE PARTITION AND SUBSEQUENT CONVEYANCES BY ALEX ARE A SHAM.

We have dwelt already upon the fact that no one proves able to assign any plausible reason for the partition of October, 1878. If Alex.'s pretended defalcation had been then known, we might, perhaps, have traced this partition suit to that source; but we have seen that such is not the case. Certainly up to fall of 1878 nothing had occurred to mar the general harmony. But, however that might be, *we find, as a matter of fact, that when the forms of law were effectually gone through with, and a division decreed, everything is, remains and operates, as of old.* It is the same happy family, which we met in 1872; the same household, the same table, the same family pot; the same common interest and lack of discrimination between members; the same arrangement throughout; the same management, the same agency, the same trusts, the same office, the same vault.

There is but one change: James is the ostensible representative instead of Alex., and Elsie countersigns all checks. (Ante.)

The partition and division (expensive as it was), *goes for naught. The outside coat is changed, the substance remains as before.*

"They are all willing to agree to that, although one may use some more than the other; there are no separate accounts kept; all is defrayed from the estate. It has been that way ever since my husband died."

Mrs. White, 264, 269.

"That has been the arrangement all the time."

Elsie, 278.

Q. "Is there any difference in running your household and managing your estate and family matters now and during the first years of your widowhood? If so, point out the precise differences.

A. Just the same—all alike. I mean our shares are alike, except that Alex. is outside since 1879, and does not share with the rest.

Q. All in one pot?

A. They are willing to do that—all in one pot, (263).

Q. Does James manage all property belonging to yourself and family in this way—in his own name?

A. He does; his brother helps and assists him in renting, a little, gives him a little advice."

Mrs. White, 264, 271.

Although the property has been partitioned and the dower set off, there is no *actual division* among mother and children.

Q. "Has there ever, since you have had charge of these various family interests, any discrimination been made between the parties therein interested, or in the receipts and charges appertaining to particular tracts, or has the whole interest been united in one common account?

A. *The rents have been collected from the various pieces of property and deposited together as a whole.* The charges of the particular tracts have been met in the same manner, and out of the *same common fund*, individual expenses of family likewise."

James, 283, 294, 301.

Mrs. White, 265.

The mother's property is mortgaged for common benefit (265).

Collections on account of the collaterals, turned over by Alex. to her as security for the judgment note, *find their way into the common treasury.* (294.)

All expenses, taxes, burdens, on real and personal property, are borne and defrayed indiscriminately. (294, 289.)

The notes and obligations signed by Alex. and James, or Alex. and sisters, are taken up by the family, as if their joint debt. (Ante.)

Household and personal expenses are met from the same fund (290, 283).

Yea, even the repairs and improvements on real estate, apparently owned by individual members, are defrayed in common.

"There was nothing antagonistic between mother and the rest of the family, and no one sought an advantage over the other.

Proceeds and expenses of whatever kind are pooled. It is one common fund."

James, 297, 294.

Whereas up to July, 1879, Alex. managed and James assisted, so now James manages and Alex. assists.

"His brother gives him a little advice." (Mrs. White, 264, 271).

James, 281.
Alex., 256, 331.
Elsie, 273.

Although his services are not expected to be gratuitous, they pay him no salary—no compensation.

Alex., 239, 332.

Alex. tends to the interests of the estate "for a living, but never thought about what his services were worth."

Alex., 239, 332.

And again—alike with former years—the representative agent and trustee, uses and signs in most transactions his *individual name*, "for convenience sake," and powers of attorney, unless in exceptional cases, are not needed to confer authority to act.

Mrs. White, 265.
James, 282.

Q. "Who signs the leases of the estate?
A. James, in his own name.
Q. Also for your building on 5th Avenue?
A. Certainly.
Q. Why is this?
A. It has always been so."

Mrs. White, 263.

Yea, for convenience sake, the mother even vests the record title to the so-called family building on 5th Avenue, in her son James (283), although the same had been allotted to the widow on partition (263).

And no one of the family can point out when asked, what particular portion of the property belongs to him or her.

James, 301.

V.—COMPILATION OF 1882.

Although utterly irrelevant to our case, we mean to say at this time, a few words about this late compilation (page 457), intended to account for the lost figures of 1879, and to supply the defects, which are manifest upon the face of the administrator's account.

After a long and protracted examination, in which it was pretended for days and days that the administrator's account was made up from bank books, vouchers, checks, etc., it was at last drawn out (page 307) that there were some books in existence which Alex., with the assistance of one Dreisslein, prepared between September, 1878, and the following July, and of which it is said by Alex. that—

"They show my receipts and expenditures both as administrator and as the *agent* of the family."

Alex., 324, 326–327, 336.

"They were commenced about September, 1878, not earlier; perhaps not till the early part of January, 1879."

Alex., 307.

The witness details how they were prepared and made up from vouchers, etc., and that his assistance was necessary in order to explain *to what account and for what purpose checks were given.*

Alex., 307,308.

That these books, when produced, show to be very irregularly made up, may be mentioned here incidentally, and it may also be of interest to know that a number of items appear to be entered towards the end, by way of omissions and corrections; that the books purport to stop about May 5, 1879 (page 309-310); that they were never balanced (312); that they cannot now be tested as to their correctness, because (among others) the two most important bank deposit accounts from which they were made up are lost, viz.: Trader's National bank from Nov. 30, 1877, to July, 1879, and City National Bank, (Alex., 257, 308, 321). Before going East in 1879, Alex. placed all papers in a trunk, which was removed to mother's residence (257); thence to Barker, Buell & Barker's. All papers are now found except what we mostly want, and Alex. is utterly unable to supply copies or duplicates (see page 308). Even his counsel fails in his earnest effort to procure what is needed, (*Ibid*).

Other features, equally suspicious, might be multiplied *ad infinitum.*

From these books the compilation of 1882 was made up as a substitute for the account in Probate. (Alex. 327).

It may also be proper here to call attention to the fact that the individual account of Alex. White on said books shows only a balance of debits over credits of about $86,000 (Exhibit 9), although he evidently labored to exaggerate the amount as much as he could, even by charging himself with more cash on hand, than originally inventoried.

We have not been able to convince ourselves that Alex. has told us the truth in any one particular—not even as to the origin of these books. If we may believe James, it would seem as if they were prepared with the knowledge of *the family* and at *their* instigation.

Q. "Who was charged with figuring and ascertaining on behalf of the family?

A. There were two parties, I think, Mr. Dreisslein and Jos. N. Barker."

James, 291.

But one thing is absolutely certain: They are in decided contrast with—

1. The administrator's report.
2. The compilation now presented.

Not to speak of the numerous omissions, errors and irregularities discovered upon the examination, we again beg to allude to Alexander's account upon said books, which shows a balance against the "*administrator and agent*" of $86,462.45.

The first compilation (now lost), from which the administrator's report was prepared, states a balance of $89,646.05; the last compilation of summer 1882, however, shows a balance of $101,880.77, including all receipts from rents, aggregating alone $115,189.82.

That the administrator's account is "*correct to a cent*," we know already (Alex. 328), and that this last compilation is *also correct*, we are told on same page (328).

VI.—EQUITIES.

The testimony leaves no possible doubt that for some seven years Alex. was permitted, by common consent, to hold himself out to the world at large as the agent and trustee of his co-heirs, authorized to transact all business in his own name. His authority was broad, unlimited and never questioned, as "we had confidence in him."

While thus acting as administrator and agent, he incurs this indebtedness with the complainant; and, although he pretends to have endorsed and guaranteed, merely, a third party's (Guyton) paper, he is the purchaser in fact. He buys, as agent, for the benefit of the White estate, because the family building badly needed a permanent tenant and James wanted a business opening! No personal motive of Alex.'s ever entered into the transaction; he did not even want his own name to appear as being interested in the purchase or business. (Ante). The bargain having been concluded, the administrator's checks and a loan procured by Alex. and James from Uncle McMicken pay the first installment. The purchaser assumes possession, and thenceforth the family participate in the benefits of said purchase. James enters the business, he draws, for what he needs, upon the company; he assists in its removal into the 5th Ave. family building: he identifies himself with the concern, by acts and words of mouth, as the representative of the Whites and owners of the property; he introduces himself and sisters as proprietors of the business; when trouble ensues he consults not only with the officers of the Company, but the lawyers of the estate; he shares in the proceeds of certain loans; he advances money when the company is in need; he watches over its success and destiny when Alex. is absent; he collects no rents, but deals with the engineer's and coal bill, as if the family pot and treasury of the American Oleograph Co. were identical. In fact, the Whites manifest an interest, which well warrants the conclusion that they meant to call Alexander's business their own, until later reflection, and perhaps unforseen occurences, caused a change of mind.

Under these circumstances, we believe to be warranted in asserting that: *The indebtedness to this complaint ante is one, which in law and equity binds the principal in the transaction as well as the agent, although in making the contract the name of the former was not used.* Nothing is better settled than the rule that—

"When a person acts for a principal, and such fact is known to the party dealing with him, his contract, though executed in his own name, binds his principal equally as though signed in the name of such principal, and parol evidence is admissible to show the fact of his agency in order to charge the principal, notwithstanding the writing is executed by the agent in his own name."

Benjamin on Sales, § 236.
Trueman vs. Loder, 11 Ad. & E., 587–594.
Stowell vs. Eldred, 39 Wis., 615.
Tainter vs. Prendergast, 3 Hill, 72.
Higgins vs. Senior, 8 M. & W., 840.
Huntington vs. Knox, 7 Cush., 371.
Story on Ag., § 410.
Wiener vs. Whipple, 53 Wis., 302.
Weston vs. McMillan, 42 Wis., 569.
Pope vs. Meadow Spring Dist. Co., 20 Fed. Rep., 35.

That Alexander acted not only as administrator, but as managing agent and trustee, we have shown in detail before. Aside from the bill in partition, his acts and testimony throughout the case relieves this question of all doubt. (Ante.)

VII.—CONCLUSION.

It will be remembered that the Lithograph business in the hands of White and Munson did not prove a financial success, and became embarrassed. Taxes to the amount of $30,000, when reassessed, had to be met by the family. The estate, although owning a large landed property, had no corresponding income at that time and no ready cash. Alex.'s own name would not any longer answer in making loans, wherever the situation was known. The credit of the family had been so frequently resorted to with relatives, friends and brokers that it was almost exhausted, a high rate of interest was demanded, and collaterals were called for. The floating indebtedness aggregated a hundred thousand dollars and more. Suits threatened not only Alexander, but the estate itself was placed in jeopardy, for which he acted as managing agent and trustee, although he had used his individual name in most transactions. What to do? Was it expected that a settlement with creditors could be easier accomplished, if the outside representative was changed and after Alexander had left for distant states?

We can only speculate as to the real motives, but certain things we know definitely: We know the accounting in probate to be a farce! We know the partition and appraisal in the circuit court to be a mere blind! We know the story of the butcher's check and Barker's unexpected "*discoveries*" to be a stupid myth, and we know that Alex. meant to defraud us, as conclusively as any fact was ever proven in the course of judicial proceedings! And neither can any doubt remain that these grantees now feign innocence and labored to remain ignorant of the true state of things.

Alexander evidently concluded to play for a short time the part of "*scape-goat.*" So he parts with all that he possesses to his mother,

brother and sisters. He allows himself personally to be saddled with the responsibility for all the floating indebtedness, and he confesses a judgment and lien to his mother for $43,000, so that his interest, conveyed to sisters and brother, might be safe beyond all contingencies of future attack. It was necessary to give to his sins proper "publicity," and part of Bro. Barker's pre-arranged basis and programme. But when he starts "for the wilderness," he carries the good will and blessings of his family with him; he holds their receipts and condonation already in his pocket (275, 292), so that but a short time hence, "*highly learned in the law*," he is enabled to return to his home, where the "lost son" is received with distinguished honors and again reigns supreme in the circle of his family.

Shall, by such machinations, these defendants be permitted to dodge liquidation of a liability, which equitably and virtually is their own? Can they set up, in consideration of their pretended purchases, an indebtedness from their agent to themselves, which in law and fact had no real existence, and which not a single one of the parties actually interested can properly account for—yea, as to the details of which every one is obliged to confess his personal ignorance? Shall these defendants be adjudged to be *bona fide purchasers, for value*, of real estate, which they themselves concede now to be worth $125,000 and more (285,292), when no one knows how valuation or consideration, in July, 1879, were arrived at, except their common attorney?

Will the courts uphold such wholesale transfers on the unsupported, vague statement of a fraudulent grantor, who, at variance with all former official statements, now swears that he owed his family over $132,000, without being able to account in detail for the pretended deficit or furnishing vouchers in that behalf?

We confess that, in the course of a thirty years' professional life, no case has come under our observation which upon the facts and law calls louder for the interference of a court of equity. No harsh results can possibly ensue to these defendants. There is no room for pleading, with them, the insolvency act. The rents doubled in two years from $16,000 to $30,000 (page 285) and are constantly on the increase. The one-sixth interest of Alex. in the estate, constituted, at its valuation in 1882, a fund largely in excess of what the family and outside creditors, in the aggregate, could possibly claim; and even if able to substantiate, by proper evidence, a valid and bone-fide indebtedness to mother, brother and sisters, to any amount whatever, still no hardship would result by subordinating the relatives' claims to those established on part of this complainant, and which appear to be supported by the broadest principles of equity.

F. W. COTZHAUSEN,
in person.

ENOCH TOTTEN,
JOHN C. SPOONER,
Respondent's Counsel.

ANALYTICAL CONTENTS.

SUMMARY OF RECORD, - - - - - - Pages 1—3
PLEADINGS AND ISSUE, - - - - - - - 3—4
THEORY OF DEFENSE, - - - - - - - - 4—6
MATTER OF ESTOPPEL, - - - - - - - - 6—7
FINDING—EXCEPTION—APPEAL, - - - - - - 7—8

EVIDENCE.

THE WHITE ESTATE FROM 1872-1879, - - - - - - - - 8—9

How managed—Alex. acts as administrator not only, but as agent and trustee—No books kept of receipts or disbursements—Every one draws at pleasure—One common fund.

ALEX. AS GENERAL REPRESENTATIVE AND TRUSTEE, - - 9—14

His authority was general and unlimited—He transacts most business in his own name—Illustrations—No accountings ever had or called for.

THE ESTATE DURING THE CRISIS OF 1873, - - - - - 14—20

Dullness of times—Scarcity of tenants—Homestead proves an elephant—Taxes in arrears—Expenses and losses—Personal expenditures—Defendant's pretended belief in large cash surplus on hand—Mere delusion—Evidence.

BORROWING MONEY ON FAMILY NOTES, - - - - - - 21—31

A fact sought to be concealed—Heavy loans from friends, relatives and brokers—Suicidal rates—No surprise to near relatives—True condition of estate—Great deal of land, limited income—No money on hand—Evidence.

PURCHASE FROM COMPLAINANT, FEBRUARY, 1878, - - - 31—41

Confidence game — History of purchase — American Oleograph Company—The Whites the real purchasers—Object in buying, twofold—Tenant for family building and business opening for James—Failure to meet first installment of purchase money—James enters the business—Familiar with all affairs—Removal to Chicago — Munson — Financial dilemma — Alexander's concealment—Attachment—Knowledge of family — Blissful ignorance.

CONVEYANCES TO RELATIVES AND OTHERS, - - - - - 41—47

Chattel Mortgage to Cleveland Paper Co.—Administrator pretends to account in Probate and brings himself nearly $90,000 in debt—He adds $40,000 for interest *by virtue of statute,* and this makes up the consideration for his conveyances to his relatives—Deeds—Bill of sale—Confession of judgment to mother—Prearranged scheme—Alex. becomes execution proof and leaves for Eastern law schools—Partition suit—Object to be accomplished.

ARGUMENT.

PRELIMINARY POINTS, - - - - - - - - - - - - 47—48

Building contracts and crisis exhausted cash resources—Income hardly sufficient to supply ordinary demands—No possibility to accumulate cash surplus—Defendants' pretended belief in surplus cash in bank is sheer deception—Story of the butcher's check, as being first intimation of Alex.'s defalcation, turns out to be a myth—Partition suit *pro forma*—Probate account highly colored.

LEGAL PRINCIPLES, - - - - - - - - - - - - - 48

Adjudicated and analogous cases—Conveyances to family members—Knowledge of indebtedness—Burden of proof.

I. SETTLEMENT IN PROBATE, - - - - - - - - - - 49—51

A mere aggregation of figures—How made up—Original compilation lost—Every one ignorant of details, except Barker, who acts for both parties—Alex's generosity towards his family—Addition of $40,000 interest by virtue of the statute—He also waives all compensation—Forgets credits, but anxiously enlarges the debit side—All loans to relatives charged to himself—Assuming improvements and repairs on individual account—Collections—Expenses of estate—Inability now to explain discrepancies, but constant readiness to supply deficiencies by new compilations.

II. INTENT OF GRANTOR, - - - - - - - - - - - 52—53

Alex. is a confessed fraud—General characteristics—He loves fictitious names and secret trusts—The family is likewise disposed—Review of Alex.'s fraudulent machinations—His *avowed object* is to defraud complainant—Correspondence with Munson.

III. KNOWLEDGE OF GRANTEES, - - - - - - - - - 53—56

Defendant's blissful ignorance in the light of the evidence—Unity of interests—What part James plays in the business—Familiarity with all that transpires—Watching—Interference of Family members—Barker & Buell constantly consulted—Complainant's attachment—Execution of mortgage to Cleveland Paper Company—Family fully informed—James holds out himself and sisters as proprietors of the business—Laboring to remain ignorant, while news of Alex.'s embarrassments was widely spread among friends and relatives—Knowledge of the attorney equivalent in law to knowledge of client—Legal principle—Barker as "*Deus ex machina*"—All parties point to him for information—All strings center with him—He acts as attorney for both parties, grantor and grantees—Fully posted—Alex. thankfully votes him $1,000 for services rendered.

IV. PARTITION AND CONVEYANCES A SHAM, - - - - - 56—58

No partition and division in fact—One common fund throughout, now as before—The outside head merely is changed—Whereas prior to 1879 Alex. managed and James assisted, so now James pretends to manage and Alex. assist "*a little*"—He earns nothing, but attends to the interests of his mother, brother and sisters *for a living*.

Things run as before—All dip into the same pot—James is now representative agent and trustee—Transacts all business in his own name—The aged mother mortgages the part set off to her, for common benefit, and then vests record title in James—Merely for convenience sake.

V. COMPILATION OF SUMMER, 1882, - - - - - - - 58—60

Attempting to supply figures of 1879 by new compilation—How made up—From account books lately prepared to meet the occasion—They show *my receipts and expenditures, both as administrator, and as the agent of the family*—Irregularities—Omissions—Conflict between books and account presented in probate—Ready to meet all emergencies—Shifting line of defense.

VI. EQUITIES, - - - - - - - - - - - - - - - - 60—61

Estoppel—Alex. was permitted to hold himself out as agent for the family and co-heirs—Indebtedness contracted for common benefit—No personal interest or motive on part of Alex.—Family avail themselves of benefits of purchase—Ratification and participation—Legal principle: Agent, although contracting in in his own name, principal equally bound—Charging agent with all losses, so as to make up a consideration for these conveyances, contrary to all rules of law and equity.

VII. CONCLUSION, - - - - - - - - - - - - - - - 61—62

Barker's scheme to protect the estate, when financial embarrassments became overwhelming and personal credit was exhausted —Alex. assumes the part of "*scape-goat*," but soon returns to the bosom of his family.

The crisis is over—The estate has remained intact—Creditors were not able to reach it—The rents have doubled, and Alex. (highly learned in the law), again reigns supreme at home and abroad—Silverman an old friend of the family, does not even know that he ever "broke up," (Silverman 388.)

Alexander does not work—He earns nothing—A gold watch (out of repair) is all that he now calls his own—But he attends to the interest of his mother, sisters and brother "for a living"—The defaulter lives on their bounty—He occupies the same office with James and Barker, their mutual legal adviser—He uses the same vault—He eats at the family table—He rides in the same carriage—He accompanies his mother to church (271), but no one seems disposed to think for a moment of Alexander's creditors—Shall it be said that law and equity afford no remedy?

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In the Supreme Court of the United States.

OCTOBER TERM, 1888.

ELSIE WHITE *et al.*, Appellants,
vs.
FREDERICK W. COTZHAUSEN.
No. 129.

Supplemental Brief for Appellee.

ENOCH TOTTEN,
For Appellee.

R. O. Polkinhorn, Printer.

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I.

ASSIGNMENT OF ERRORS.

In view of Rule 21, we abstain from noticing anything except what is specially assigned as error.

II.

ANSWER ON OATH.

Great stress is laid by appellants' counsel upon the fact that the answers in the State court were *sworn* to. But it will be observed that on removal the pleadings were re-cast, and an oath to the answers was *expressly waived* (94, 141), and therefore the contention of counsel finds no foundation, except in the fact that some of these defendants *elected to adopt their answer* in the State court as answer to the bill thus newly framed. But even on the law the position of the other side is not tenable when applied to the facts of this case. It will be borne in mind that the defendants themselves, on their exam-

inations, are made to destroy the effect of their previous answer. In the light of the evidence their defense becomes inconsistent and oscillating; their story becomes unreasonable, and the surrounding circumstances discredit the position which they assumed in their answer.

"There is no unvarying rule on the subject."

Veile vs. *Blodgett*, 49 Vt., 270;
Brown vs. *Brown*, 10 Serg., 84;
Long vs. *White*, 5 J. J. Walsh, 238;
Berry vs. *Sawyer*, 19 Fed. R., 287;
Ozark Land Co. vs. *Leonard*, 24 Fed. R., 666.

III.

REVIEW OF FACTS.

No question of law is presented by the assignment of error. The contest turns on the weight of evidence.

We invoke the familiar doctrine that *every presumption on appeals is in favor of the finding and decree below*, and that the burden is on the appellants to show error.

> "In this case the Court expresses its dissatisfaction with appeals being made, whose only effort is to throw upon *it* the burden of making minute investigations and analyses of evidence in controversies, where the case turns in every point upon simple questions of fact, and where there is not a doubtful question of law involved in the entire record. And, declaring its conviction that the time of this court, due to other parties and to more important interests, should not be consumed in writing and delivering opinions which, if they attempted to go into examination of the facts to justify the decision of the

court, would be equally tedious and useless, confines itself to announcing its judgment of affirmance without the exhibition, through its delivered opinion, of the mental processes and arguments, by which it has reached its conclusion."

Mann vs. *Rock Island Bank*, 11 Wall., 650.

What is said to be the rule on reviewing the conclusions of a Master in Chancery, is equally applicable to the suit at bar:

"In dealing with these exceptions, the conclusions of the Master, depending upon the weighing of conflicting testimony, have every presumption in their favor, and are not to be set aside or modified, unless there clearly appears to have been error or mistake on his part."

Medskar vs. *Bronebreak*, 108, U. S., 71.
Tilghman vs. *Proctor*, 125 U. S., 149.
Mason vs. *Crosby*, 3 W. and M., 269.

IV. AS TO THE MERITS.

The complainant proceeds upon the theory that the conveyances were void as to him because—

1. They were voluntary and a sham;

2. They were made with the intent of cheating him and hindering and delaying him in the collection of his valid claims;

3. They were made in violation of a statute.

The question in this case, without reference to the violated provisions of the State Statute, is not merely one of inadequacy or want of consideration; it equally depends upon the *good faith* of the transaction:

"A sale may be void for *bad faith*, though

the buyer pays the full value of the property bought. This is the consequence, where his purpose is to aid the seller in perpetrating a fraud upon his creditors, and where he buys recklessly, and with guilty knowledge."

Clements vs. *Moore*, 6 Wall., 312.

See also, Twyne's Case, 1 Smith Ldg. Cases 1.

A sale by one *insolvent of all his property, is presumptively* fraudulent, because the necessary effect of such a sale must be to hinder and delay creditors.

1 Smith's L'dg. Cases, 52, 59, (Note 7);
Walcott vs. *Almy*, 6 McLean C. C. 23;
Power vs. *Allston*, 93 Ill., 587;
Singer vs. *Jacobs*, 3 McCrary, 638;
Benedick vs. *Gill*, 2 McCrary, 486.

And this presumption is strengthened where the sale has been made to one in *confidential relations* with him.

1 Smith's L'dg. Cases, 50.

Where *all* the debtor's estate was conveyed to his *wife or near relatives* or children, for an *inadequate* consideration, it was held to be a badge of fraud.

1 Smith's L'dg. Cases;
Picket vs. *Pipkin*, 64 Ala., 520;
Thomas vs. *Beck*, 39 Conn., 241.

And where the consideration was *inadequate, coupled* with an agreement for his *future support.*

Egery vs. *Johnson*, 70 Me., 258;
Church vs. *Chapin*, 35 Vt., 223.

The application of the above principles of law to this case, will readily appear from the opinion of

Gresham, J., delivered orally and reduced to writing by the stenographer. This opinion was not attached to the transcript of the record. We therefore insert it here:

Opinion of Gresham J.

CIRCUIT COURT OF THE UNITED STATES NORTHERN DISTRICT OF ILLINOIS.

FREDERICK W. COTZHAUSEN
vs.
ALEXANDER WHITE *et al.*

GRESHAM J.:

"I am prepared to dispose of the case of *Cotzhausen* vs. *White* et al. Cotzhausen obtained judgments against Alexander White for $15,000, or more. Executions issued, upon which return of *nulla bona* were made. This suit was brought to subject to sale, to pay the amount due Cotzhausen, certain real estate conveyed by Alexander White to his mother, brother, and sisters, on the ground that the conveyances were colorable and fraudulent as against the complainant and other creditors. The allegations of the bill are denied in the answer.

Alexander White, Sr., died in 1872, leaving a large estate. His son Alexander, one of the defendants, was appointed administrator. He gave bond with his mother and some of his sisters as sureties, and qualified. He at once took possession of the entire estate, real and personal, and *with the consent of his mother, brother and sisters managed the entire property without let or hindrance, doing with it just as he pleased*, and *without reference to the administration*. He used the trust funds with the consent of the family in improving real estate in the city, and elsewhere, and he rented real estate, and *all moneys which came into his hands from the sale or rental of the real estate, were mingled with the trust fund*. He supplied his mother, brothers, and sisters

with money by giving them checks, or by checking out the money himself, and handing it to them. *No account was kept with the estate, or with his mother, or brother, or sister.* There was *one common fund for all*, and there is no evidence showing the axact amount that Alexander spent himself, or that his mother, or any of the other co-defendants spent. It seemed to be the desire of the family that *Alexander should take the place of his father, and he did exercise the same authority*, apparently, *over the property that the father had previously exercised.*

The complainant owned $20,000 of the stock of a lithographing establishment in Milwaukee, the entire stock being $22,000. One Guyton went from Chicago, at the instance of Alexander, to purchase this stock, or at least, to purchase the complainant's interest in it. It is not necessary to recite all that occurred preliminary to the final agreement. Cotzhausen finally agreed to sell his stock. $5,000 was to be paid in cash, and the remainder in three annual installments. When a difficulty arose about the amount that was to be paid for removing the property to the dock at Milwaukee, *James stepped in* and assured the drayman, or contractor, that he would pay any sum that might be due him for this purpose. After the property was removed to Chicago and placed in the Fifth Avenue building, a company was formed to conduct the business here. Alexander failed to pay Cotzhausen when his payments matured. *Cotzhausen then brought suit and attached the concern here*, and a custodian was placed in the building. *Some of the officers of the Company*, Alexander being absent, *went to the family residence to consult with the mother and others* about the embarrassment resulting from the attachment. The mother referred these officers to the *attorney of the family.* The sheriff called at the Fifth Avenue building now and then, and inquired for Alexander, presumably, to serve writs upon him. *James knew this.* The sheriff also called once or twice at the residence of the family and inquired for Alexander.

Alexander made no settlement of any kind, or report, to the Probate Court after filing his inventory in 1872, *until the summer of* 1879. About this time, or just before, the real estate was divided in an amicable partition suit in one of the State courts. The share of one sister was assigned to her in severalty; the other three sisters had their shares assigned to them together with James, and Alexander had his share set off in severalty. In the final settlement, in probate, Alexander charged himself with a large amount, which he claimed he had received from the estate in various ways, and also with $40,000 of interest, which was at the rate of 10 per cent. per annum. *He received no credit for managing the large estate in any way.* He also charged himself with four or five thousand dollars in money. It appeared IN THIS WAY, that Alexander was indebted to his mother, brother, and sisters in a sum exceeding the value of his share in the estate; and he accordingly conveyed his ENTIRE real estate to the co-defendants BY WAY OF PREFERENCE. The complainant insists that Alexander managed the entire estate *as the agent of his mother and co-heirs;* that he handled the real estate for them as their agent, and could not therefore assume all the losses, which he sustained as agent, as against other creditors, and that Alexander was not indebted to his mother and co-heirs in a sum equal to the real estate, which he conveyed. It is true the mother and James and the sisters, with perhaps one or two exceptions, all swear that they supposed Alexander had managed their interest successfully, and that the estate was preserved intact, until a small check given to a butcher was refused by the bank in the summer of 1879; and the mother, and perhaps some of the co-heirs, also swear that they did not know of Cotzhausen, or his claim, at the time of the conveyance of the real estate, and the settlement in probate.

The evidence clearly shows that, for some reason, *Alexander was obliged to raise money several years* before the settlement and conveyance, and that in doing

so his mother and co-heirs had *endorsed for him*. He had done this, in part at least, he said, to pay taxes, and to pay other things for the benefit of the estate. The Court must weigh the evidence, and it is *forced to believe* that the mother, sisters, and James *knew* that Alexander was driven to raise money before the settlement in probate, and that his *indebtedness to Cotzhausen was known*. Before the settlement and conveyance, Alexander managed the entire property, real and personal, with some assistance from James, for the benefit of all. There was one common fund. After the settlement James was substituted for Alexander, and we find Alexander assisting James. Alexander remains a member of the family, just as before; he is paid money out of the common fund, as before, but perhaps not to the same extent. He is supported out of the common fund, receiving his clothing in that way, as well as his board; and, although the property was divided, as already stated, in fact *it was not treated as having been divided*. James, with the assistance of Alexander, continued to manage the real estate, *without reference to the partition*. The rents were collected and put into one common fund, just as before. The parties were all of age, and, although it was competent for them to divide the property after they had reached an agreement by exchanging deeds, they saw fit, for some reason satisfactory to themselves, upon the advice of their counsel, to have a decree in partition and division thus made. It is *also significent* that after a family, according to their own showing, had been defrauded by Alexander, and after they knew he was utterly untrustworthy, and after the settlement and the substitution of James for Alexander, a number of notes given by the latter, as defendants claim, not for the benefit of the estate, were paid by James, with the consent of his mother and sisters, and a note given to Mr. McMicken by Alexander, and endorsed by James, for $8,800, several years before the settlement, has been recognized by the family to the extent of paying the interest on it regularly.

After this suit was brought and the defendants *examined to some extent as witnesses, it seemed necessary to revise the settlement in probate*, and swell Alexander's indebtedness. Items of indebtedness thus appear which did not appear before. Alexander is charged with rents collected by agents and not accounted for. He is charged with money paid, with the consent of the family, in the purchase of stock in a hotel manufacturing company, from which nothing was derived. In short, Alexander charged himself with sums which the law will not allow as against other creditors.

I prefer placing this case upon the ground that Alexander was not indebted to his co-heirs in a sum equal to the value of the property which he conveyed. The difference between what he actually owed and the value of the property conveyed by him at the time was more than the amount of Cotzhausen's debt. *Alexander's own letters and dispatches and his testimony show him in a very bad light.*

The decree will, therefore, be that the defendants pay into court the amount of Cotzhausen's debt, interest and costs, within sixty days, and, upon failure to do so, that the property conveyed by Alexander, or so much of it as may be necessary, shall be sold to pay Cotzhausen's debt."

The full scope of the above opinion will be more readily perceived on reference to appellee's original brief.

UNLAWFUL PREFERENCES.

On pages 9, 11 of appellants' brief they argue that—

> "A debtor in failing circumstances may prefer one creditor to the exclusion of others, when he does so in good faith and for valuable consideration."

Such was the drift of judicial decisions generally, but the *Voluntary Assignment Act* of the State of Illinois, of 1877, (which went into effect July 1st, 1877), radically changed the law on this subject in that State.

Section thirteen of that act is as follows :

> "Every provision in *any assignment* hereafter made in this State, providing for the payment of one debt or liability in preference to another, shall be void, and all debts and liabilities within the provisions of the assignment shall be paid *pro rata* from the assets thereof." (Laws of Ill., 1877, page 120.)

In view of this legislation the appellee contends that—ignoring the question of consideration and good faith altogether—

> *The several conveyances and confession of judgment by Alexander White, were, in effect, a general assignment, giving preferences, and consequently void, because in contravention of that statute.*

The evidence shows that these several conveyances of real and personal property, were made about the same time, and after the debtor had resolved to voluntarily dispose of the whole of his estate, and that thereby he substantially stripped himself of all his assets, without reservation or exception.

Late decisions of the highest court of the State of Illinois leave no doubt that the above statute forbids *preferences* in such cases :

> "The statute is silent as to the *form* of the instrument or instruments, by which an *in-*

solvent debtor may effect an assignment. It is within the spirit and intent of this statute that, when the debtor has formed a determination to voluntarily dispose of *his whole estate*, and has entered upon that determination, it is immateaial, into how many parts the performance or execution of his determination may be broken—the law will regard all his acts, having for their object and effect, the disposition of his estate, as parts of the single transaction.—Preferences will, in a court of equity, be declared void, and set aside, as in fraud of the statute."

Preston vs. *Spaulding*, 120 Ill., 908.

"The Voluntary Assignment Act is, in its character remedial; and must therefore be liberally construed; and no insolvent debtor, having in view the disposition of his estate, can be permitted to defeat its operation by effecting unequal distribution of his estate by means of an assignment and *any other shift or artifice* under the forms of law." Ibid. See also *Strong* vs. *Chenay*, (Chi. Legal News, Dec. 1, 1888.)

In *Freund* vs. *Yeagerman* (26 Fed. R., 819), it is said by Treat, J., on page 814, in commenting on a statute similar but less stringent, than the Illinois statute:

"The very purpose of the law was that *no preference should be given.* No matter *by what means the end is sought to be effected*, it is in violation of the statute. You may call it a mortgage or you make a confession of judgment, or under any other contrivance by whatever name known; if the purpose is to dispose of an insolvent debtor's estate, whereby a preference is to be effected, it is in violation of the statute. That was the opinion of Brother Miller, with which I fully concurred."

In *Winner* vs. *Hoyt* (66 Wis., 228). Six chattel mortgages and five assignments of accounts, transferring the *entire* property of insolvent debtors, to certain of their creditors, were held to be *in effect* a general assignment with preferences, and void as to other creditors. "*It is not so much the form as the effect of the instrument which is to be considered.*" Ibid, 238.

(Quoting *Freund* vs. *Yeagerman*, ante, and a number of cases reported in the "Federal Reporter.")

> "Where an insolvent debtor transferred all his property to a single creditor under such circumstances that it is obvious that there is no intention of merely giving security, the transfer will be treated as an assignment in trust for the benefit of creditors, regardless of the *form* of the instrument."
>
> *Capp* vs. *Dittman*, 21 Fed. R., 15.
> See, also, *Berry* vs. *Cutts*, 42 Me., 445.

ESTOPPEL.

For Alexander's indebtedness to the complainant the whole family is equitably bound.

The American Oleograph Company was purchased by Alex. White in his capacity as agent and trustee for the benefit of all the family, in order to furnish a profitable occupation for the youngest son and a permanent tenant for the unoccupied building on 5th Avenue, the property of the family. The proof shows that both the widow and James B. White consented to and confirmed this purchase, and that the family actually received the benefit of it.

For the facts see appellee's brief, 32-42, 60.

> "When a person acts for a principal, and such fact is known to the party dealing with him, his contract, though executed in his own name, binds his principal equally as though signed in the name of such principal, and parol evidence is admissible to show the fact of his agency, in order to charge the principal, notwithstanding the writing is executed by the agent in his own name."

(See authorities on original brief for appellee, p. 61.)

OSCILLATING AND CONFLICTING DEFENSES.

The defendants, by their several answers, insist that upon an accounting in probate the sum of $129,769.83 was found due from the *administrator*, and they account for the conveyances and confession of judgment by the indebtedness, thus adjudged to be due.

They also expressly deny, when pleading to the matter of estoppel, that Alexander White *in any way acted as the agent and representative of the family.* (Pages 31, 21.)

And again they insist, in further answering, that "*they have fully stated all the circumstances within their knowledge as to when the indebtedness to them accrued, which was that the money went into his hands as administrator.*" (Pages 21, 39.)

But all these explicit averments are fairly disproved by the evidence.

> "The accounting in probate, like the partition suit, was a mere blind. Not even appellant's counsel (see his brief, pages 25-28) can

uphold the charge of $40,123.80 added for interest *by virtue of the statute*, nor the omission of credits arising from commissions and services; nor from Barker & Tuley's note; nor from the assessment of stock in Lake Forest Hotel Company, $10,903.14; and when thus not able to make good the *original* defence of a consideration growing out of the alleged accounting *in probate*, the appellants, apparently abandon their original scheme of defence, or at least seek to eke it out by resorting to another. It is now sought to account for the deeds and confession of judgment by an indebtedness *arising in some other way*, and *from other sources*. They seem to have forgotten that in their several answers all of them explicitly denied that Alexander White ever acted in *any other capacity* than as administrator, and that *the indebtedness arose in any other way*."

It is also instructive to notice how the defalcation of Alexander White gradually swelled in the course of these proceedings, and as the exigences of the defenses seemed to require. The following references will show the various and increasing estimates, made from time to time:

Page 408, Uncle McMicken—spring, 1879..	$40,000 00
Page 313, Alex. acct. books—Ex. 9, May 14, 1879	83,400 38
Page 313 Alex. acct. books—Ex. 9, Subsequent additions	86,462 45
Accounting in Probate July 21, 1879, Principal	89,646 05
Page 278, Mary . ———, July, 1879..	100,000 00
Page 254, Alex. on 1st examination (at least)	$100,000 00
Page 328, Alex. present compilation-deft. Ex. I, Summer, 1882	101,880 77
Page 291, James B.———, July, 1879...	120,000 00

It is deemed not improper to invite the attention of the Court to the fact that two of the appellants for whom an appeal was prayed, have failed to perfect it, thus leaving the case in an unsatisfactory if not a fatally defective condition; that no question of law is assigned as error by appellants' counsel; that the appellee has been endeavoring, for nearly ten years, to collect negotiable paper of undoubted validity; that the decree, under the statutes of Illinois, bears interest at the rate of only six per centum per annum, and that real estate in Chicago is and has been increasing in value at an almost fabulous rate, and to suggest that this case is one which justly merits the application of the provisions of Rule 23 of this Court.

ENOCH TOTTEN,
For Appellee.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM A. D. 1888.

No. 129.

ELSIE WHITE, JAMES B. WHITE, MARY S. WHITE ANNE C. WHITE AND ANN WHITE,
Appellants,

vs.

FREDERICK W. COTZHOUSEN,
Appellee.

And the appellants, in addition to the assignments of error to be found on the eighth page of the brief filed by counsel in said cause, come and assign for further errors as follows:

4. That the decree of the Circuit court in said cause is not based upon or supported by the charges of the said original and supplemental or amended bills of complaint in said cause, filed by the said appellee.

5. That the court erred in setting aside the conveyances to Margaret White and to Elsie, James B., Mary S., and Annie C. White, and the judgment in favor of Ann White.

IRA W. BUELL,
Solicitor.

CHARLES M. OSBORN,
Counsel for Appellants.